

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT
CIVIL ACTION NO. 2473CV00249

ROBERT BRANCA, TRUSTEE OF)
THE ANC NOMINEE REALTY TRUST)
Plaintiff,)
)
v.)
)
TOWN OF WESTPORT)
HISTORICAL COMMISSION,)
Defendants.)
)

**MEMORANDUM IN SUPPORT
OF MOTION TO INTERVENE**

BACKGROUND

The Proposed Intervenors

The proposed intervenors in this matter are Pamela R. Trippe, Sally W. Harty, Trustee of the Sally White Harty Revocable Trust, John J. Moriarty, and Erin R. O’Boyle (hereinafter “Neighbors” or “Applicants”). All are residents of the Westport Point Historic District. Applicants Ms. Trippe and Ms. Harty are also abutters to the Plaintiff, Robert Branca, Trustee of the ANC Nominee Realty Trust (hereinafter “Plaintiff”). Applicants move to intervene as party-defendants in the above-captioned action under Mass. R. Civ. P. 24(a)(2) and/or 24(b) for the reasons set forth herein.

Summary of Underlying Dispute and Interests of Applicants

The homes of the Applicants and the Plaintiff are located in the Westport Point Historic District (“the Historic District” or “the District”), which is governed by M.G.L. c. 40C; the Westport By-Law, Article LIX (“By-Law”); Westport Historical Commission Rules and Regulations (“Rules”); and the Westport Point Historic District Guidelines (“Guidelines”) (attached collectively as **Exhibit A-1, A-2, A-3 and A-4**). The Historic

District has been in existence since 1973. Its purpose is to preserve one of Massachusetts' most beautiful, historic villages that is comprised of more colonial-era homes than just about any other town in Massachusetts. Ms. Trippe's and Ms. Harty's as well as Plaintiff's homes are on the Westport River with magnificent views of the harbor and river. The abutters' homes are their permanent full-time residences. Their homes are located in very close proximity to the Plaintiff's summer residence and the expansive, elevated structure that he has built in the Historic District without first obtaining one of the three Certificates required from the Westport Historical Commission (the "Commission").



Photo taken from the West Branch of the Westport River showing the Plaintiff's structure and the abutters' homes

The Commission is entrusted with carrying out three primary mandates with regard to oversight of the Westport Point Historic District. The Commissions' efforts to uphold and enforce these mandates are of critical importance to maintaining the unique ambiance and historical characteristics of the District both now and into the future. These three mandates are set forth in the Guidelines as follows:

- To preserve and protect the distinctive characteristics and settings of buildings and structures at Westport Point (the Point) significant to the history of Westport and to the Commonwealth of Massachusetts.

- To assure that alterations and addition to all buildings and structures are not incongruous to the historic aspects or the architectural characteristics of the existing building or structure or its surroundings.
- To assure that new construction is compatible with neighboring buildings and fits into the context of the District.

Exhibit A-4 – Guidelines for the Westport Point Historic District, p. 1 (2017) (emphasis added).

The nub of this case can be summarized readily. The Plaintiff maintains that the structure he has built and wishes to finish is exempt completely from the review jurisdiction of the Commission because he alleges that (a) it is a wall and (b) is not viewable from a public body of water. The Applicants maintain that all exterior construction projects in the District are within the review jurisdiction of the Commission in that such projects must first receive one of three certificates from the Commission before any work can commence.¹ The second issue is one of precedent. Applicants strongly believe allowing Plaintiff’s construction project to stand creates a precedent that completely undermines the authority of the Commission and the integrity of the District. Further, Applicants assert that, if Plaintiff truly believed that his project was exempt from review jurisdiction, then the proper procedure would have been to apply for a Certificate of Non-Applicability. Such an application would have allowed the Commission to confirm (or not) the Plaintiff’s belief that his project was exempt. If the Commission

¹ The Guidelines expressly affirm Applicants’ position, stating: “No exterior work may be initiated without a Certificate from the WHC. The Westport Building Department will not issue a building permit without a Certificate. Changes initiated without a Certificate may be stopped by the Building Department and the owner may be subject to fines, and to a Superior Court order requiring restoration work done in violation of this law.”

agreed it was exempt, it could have then provided the requested Certificate to the Building Inspector documenting this fact prior to the issuance of building permit.

No such process happened here. Instead, the Plaintiff applied for two successive building permits without any request for a certificate from the Commission. The permits were erroneously issued on March 28, 2023 and May 5, 2023. See **Exhibits B and C**, respectively. The Building Inspector apparently believed, based on the permit Applications, that Plaintiff intended to build an inground pool at grade not viewable from a public body of water which would be exempt from review by the Commission (Westport ByLaws, Sections 5911, A.1. and A.7.) As a result, the Building Inspector issued the building permits without first ensuring that the condition precedent of obtaining a Certificate from the Commission had been met. And, as a result, none of the Plaintiff's abutters and neighbors in the District received notice or an opportunity to be heard in relation to his very substantial construction project in the heart of the District.

Plaintiff's abutters and neighbors first realized the magnitude of what the Plaintiff was constructing early in the Fall of 2023 when he constructed a 5000 square foot, structurally engineered rebar and concrete foundation on the property that was entirely incongruous with the historic context and surroundings of the District. This was brought to the attention of the Building Inspector, Ralph Souza at that time. The Applicants did not sit on their hands and wait until Plaintiff had spent hundreds of thousands of dollars to complain as Plaintiff has alleged. They acted as soon as they knew what was happening.

Here, Applicants maintain that both of Plaintiff's rationales for commencing construction in the District without requesting any certificate are legally untenable. The

rebar and concrete foundation that Plaintiff has constructed is anything but an exempt “wall”. Rather, it is a structure that stands 8.8 feet high, contains an internal equipment room complete with a window and door, and would hold approximately 15,000 cubic yards of material. There would be no need for an engineers’ stamp on a drawing of a wall. Plaintiff’s contention that this is a wall is patently absurd. A wall is a divider of spaces. This is a structure that encompasses spaces; it does not divide them. It would enclose a room and serve as a foundation for a swimming pool, a spa, a pergola and a kitchen. It is anything but a wall.



If these facts alone were not already enough to confirm that Plaintiff’s project requires Commission review, the additional fact that the structure can be viewed from a public body of water from three directions does. Plaintiff knows full well that his project

is viewable from a public body of water which completely undermines his claim of exemptions and this Appeal.



Plaintiff's Complaint correctly states that the exemption criteria requires that the structure not be viewable from a public body of water. Yet he knows that his elevated

structure is viewable from the Westport River from the South, West and Northwest. The Plaintiff, a Massachusetts attorney and real estate developer, nevertheless claims without any merit that his project is exempt. In the same pleading, Plaintiff asserts two mutually exclusive, inconsistent propositions.

It is irrefutable that Plaintiff's project is an engineered structure that is viewable from a public way which the statute, ByLaws and Guidelines all define as including a public body of water and, as such, requires either a Certificate of Appropriateness from the Commission or a Certificate of Hardship. Had the Plaintiff applied at the outset for a Certificate of Non-Applicability for his project based on his alleged belief that it was exempt from needing one of the other two certificates, he would have quickly learned otherwise and would have been able to immediately correct his course. He did not. Instead, he appears to have invoked a tactic of seeking forgiveness rather than permission. Any harm that Mr. Branca allegedly sustained is entirely self-inflicted.

The Guidelines in place for exterior projects in the District confer specific value, benefits and assurances to homeowners in the District. The fact that a home is situated within the District adds enhanced value and appeal to that property because owners in the District can rely on the fact that they will all have to play by the same rules when undertaking exterior projects there. This, in turn, ensures that the historical landscape, buildings, views, and the overall "context" of the District remains harmonious, now and into the future. When, as here, a property owner in the District ignores the Rules and Guidelines of the Commission, the integrity and congruity of the District and its surroundings are placed at risk. Such unilateral non-compliance with District Rules and Guidelines harms the property interests of other owners in the District and, to an even

greater extent, the property interests of those owners with property in close proximity to that of a non-compliant property, in this case, the Intervening Abutters.

The Commission has denied Plaintiff's Application for a Certificate of Appropriateness on the merits largely because the structure, which is viewable from the Westport River, is entirely inconsistent and incongruous with the values and aesthetics of the District that the Commission is entrusted to uphold.



Here, the Plaintiff knew the pool and its encompassing structure would require a Certificate of some type *even if* it was, as he allegedly and incorrectly believes, an

exempt project. We know that the Plaintiff knew that a certificate was required because he had previously obtained such a Certificate of Appropriateness from the Commission prior to changing his roof in 2021. Further, Plaintiff knew that the pool and the structure could both be viewed from a public way, i.e. a public body of water, which also categorically negates its exemption from review. See, Town By-Laws, Section 5911, A.7, and Guidelines Section 3.B. And if that is not enough evidence of the Plaintiff's prior knowledge of the requirement for a Certificate, the Guidelines should have cleared up any misconceptions. Under Section 3, "Basics for Owners" the Guidelines provide the following clear instructions:

"No exterior work may be initiated without a Certificate from the WHC. The Westport Building Department will not issue a building permit without a Certificate. Changes initiated without a Certificate may be stopped by the Building Department and the owner may be subject to fines, and to a Superior Court order requiring restoration work done in violation of this law." (emphasis added).

In error, the Building Inspector issued two building permits for Plaintiff's project, one for the pool and one for the structure, mistakenly believing that the work was exempt. He also failed to obtain a certificate from the Commission which is required whether the project is exempt or not. Plaintiff claims the Building Inspector obtained the greenlight from the Commission in a conversation with its Vice-Chair, William Kendall. Mr. Kendall vigorously denies this allegation. (See Transcript of Commission Meeting of December 4, 2023, at page 2, attached hereto as **Exhibit D.**) Moreover, Mr. Kendall did not have the authority to give a "greenlight" to the Building Inspector as the Guidelines expressly provide that, for Certificates of Non-Applicability, only the "Chair and clerk can issue this certificate without waiting for a full meeting." (**Exhibit A-4** - Guidelines,

p. 6). In any event, an exempt project still requires a Certificate of Non-Applicability, which the Plaintiff here neither requested nor received prior to seeking a building permit and initiating construction.

Importantly, the erroneous issuance of a building permit to the Plaintiff for this project provides no safe harbor from the requirement of obtaining a Certificate from the Commission. The Massachusetts Building Code provides that a Building Permit issued in error may be voided. 780 CMR 105.6. After the construction commenced and the neighbors could see the size, scale, and the height of the foundation, they promptly brought the matter to the attention of the Commission and the Building Inspector and a stop work order was issued on November 17, 2023. See **Exhibit E**.

The Commission voted unanimously to deny Plaintiff's application for a Certificate of Non-Applicability on December 26, 2023 (See **Exhibit F**), a Certificate of Appropriateness on February 5, 2024 (See **Exhibit G**), a request for a continuance on February 5, 2024, and a request for reconsideration on March 5, 2024. The Town has recently filed an enforcement action against Plaintiff seeking a halt to construction, the removal of what was built and daily fines. (See **Exhibit H**.)

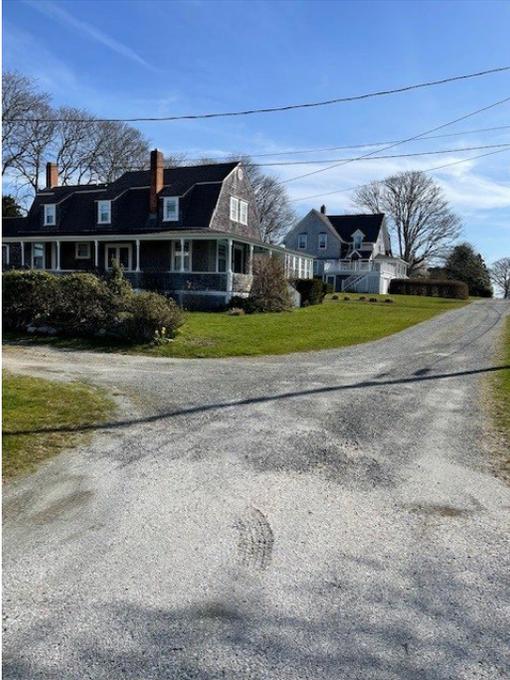
Here, the Applicants' constitutional interests in the use and enjoyment of their property², as well as their interest in maintaining the economic value of their property, stand to be significantly diminished, if the Plaintiff were to prevail. The rules of the Historic District innately enhance the value of property in the District by ensuring that the historic, beautiful, and quaint village allure of the District remains intact. Many of the

² The Massachusetts Supreme Judicial Court has expressly affirmed that a person's "right to use and enjoy their property is constitutionally secured by arts. 1, 10, and 12 of the Declaration of Rights and the Fourteenth Amendment to the United States Constitution." *Kennie v. Natural Resource Dept. of Dennis*, 451 Mass. 754, 760 (2008).

homes were built in the 1700's and are meticulously maintained. The precedent this case would create would be a significant depreciator of those values. If an owner can build what he wants in violation of the requirement that he or she first get a certificate from the Commission (and thereby avoid complying with the aesthetic and other building requirements in the District), the unique characteristics and context of the District would be irreparably altered and diminished.

The abutters will be harmed even more significantly if the Plaintiff were to prevail and be allowed to complete this project as currently proposed. First, their use and enjoyment of their homes will be severely impacted by the elevated entertainment compound proposed. The associated elevated lights, glass glare, and view obstructions will disturb their enjoyment of what has historically been a peaceful and tranquil environment. The abutters' homes are in a most tranquil and bucolic of settings. The impacts on Ms. Trippe and Ms. Harty would be very significant personally and substantially as to their properties' respective values.





The Applicants have argued throughout the underlying proceedings that it is essential that this case not establish the precedent that a person can build what they want in the Historic District without Commission involvement and get forgiveness later. It would completely undermine the authority of the Commission, the integrity of its rules, and thwart the Commission's responsibility to effectuate and maintain its mandates as to the Westport Point Historic District. The Applicants are concerned that the very nature of one of Massachusetts' most historic villages would devolve into just another waterfront playground with no regard for the historic preservation that has been sacred to the homeowners who regard themselves as custodians of their properties. A view down Main Road in the District would demonstrate why Applicants wish to hold the line against unpermitted development that is incongruous with these values and the context and aesthetics of the District.



The Applicants therefore move to intervene in this matter to protect the substantial interests that may be impaired by the disposition of this litigation.

DISCUSSION

Intervention is Appropriate Under Rule 24 (a) or (b)

Mass. R. Civ. P. 24 (a)(2) permits one to intervene as of right where (1) the applicant claims an interest relating to the property which is the subject matter of the action and (2) he is situated such that the disposition of the action may impair or impede his ability to protect that interest and (3) where the applicant's interests are inadequately represented by the existing parties.

In addition, a person may intervene with the Court's permission "when an applicant's claim or defense and the main action have a question of law or fact in common." Mass. R. Civ. P. 24(b). "A judge has broad discretion in deciding whether to permit intervention." *Cruz Management Co. Inc., v. Thomas*, 417 Mass. 782, 785 (1984). "In exercising its discretion, the Court shall consider whether the intervention will unduly

delay or prejudice the adjudication of the rights of the original parties.” Mass. R. Civ. P. 24(b).

In this case the Applicants should be permitted to intervene as of right or with the permission of the Court. As discussed below, the applicants have a significant interest in this litigation and the disposition could significantly impair their ability to protect their interests. The Town of Westport’s interests are not synchronous with those of Applicants.

A. The Applicants’ Own Property Interests Are At Issue, Their Ability To Protect Their Interests At Risk, And They Are Inadequately Represented By Existing Parties

In this case, the Applicants have significant personal interests in the outcome of this litigation. Plaintiff’s construction is located immediately adjacent to the homes of abutters Trippe and Harty and in close proximity to the other Applicants. The values of all of their homes will be diminished substantially in the event that Plaintiff’s construction project is allowed to be completed as planned and as partially constructed.

There is no question that the values of the homes of the immediate abutters will decrease. The elevated lights, glass glare, and view obstructions will adversely impact the value of the homes of Ms. Trippe and Ms. Harty, as well as their ability to enjoy the historic setting and context of their properties. Photographs of the construction site from the homes of Ms. Trippe and Ms. Harty are attached as **Exhibit I** Further, if the construction is allowed to remain unchanged, the enforcement capacity of the Historic District will be greatly diminished if not negated by the established precedent, in which case the values of all the District’s homes will be diminished, including those of Intervenors.

Evidence at trial will establish that the appraised values of the homes in the District are significantly enhanced due to the Rules and Guidelines that are in place and have been enforced to ensure the historic integrity and congruity of the District. The Town of Westport has no legal responsibility to protect the real estate values of the homes of Ms. Trippe, Ms. Harty or any of the other Applicants. But the outcome of the litigation will impact those values either by maintaining them or devaluing them, if Plaintiff were to prevail. This dichotomy, as well as the others, fully justifies and requires that Applicants be allowed to intervene to protect their property interests.

Further, Plaintiff seeks an injunction to allow him to continue construction under his current plan prior to trial. Applicants oppose such an injunction and seek to defend against Plaintiff's claim that he should be granted such preliminary relief. It is possible that the Town could conditionally assent to the construction before trial with the Plaintiff assuming the risk of having to remove the structure if he does not prevail. Such an attempt to obtain pretrial permission from the Town to build an unpermitted structure would harm each of the vital interests of Applicants without their ability to protect or advocate for themselves, unless intervention is permitted.

It must be noted that a pretrial resolution of this litigation between the Plaintiff and the Town of Westport could significantly impact the Applicants' interests without taking those interests fully into account (if at all). In fact, that is a very possible result of a pretrial resolution between the existing parties because it is not the Town's responsibility to protect the specific property interests and rights of the Applicants. Negotiations to reach a compromise with Plaintiff would certainly be in the Town's financial interest but could be inimical to the positions and interests of the Applicants. Courts have recognized

that a party's potential to compromise in a manner that would be prejudicial to the persons seeking to intervene can constitute evidence that representation by existing parties may be inadequate and therefore that intervention is justified. *Nextel Communication of the Mid-Atlantic v. Town of Hanson*, 311 F. Supp.2d. 142, 152-53 (D. Mass. 2004).

Finally, the glaring dichotomy between the interests of the Town and the Applicants arises from the consequences of allowing Plaintiff's development to be completed as designed. As designed, it will be an outdoor entertainment center of significant scale. It will cover over 5,000 square feet of surface area and will be elevated roughly 8.8 feet above grade, not including the pergola which would add approximately 15 vertical feet. As referenced above, it will contain a large swimming pool, a spa, an outdoor kitchen, a pergola, and associated lights, a reflective glass pool wall, and equipment. The elevated noise and lights from this large development in very close proximity to the homes of Ms. Harty and Ms. Trippe will have a profound impact on the quality of their lives at home, where they spend most of their time. The Town of Westport is not responsible for protecting the property rights of individual property owners in the District and, in that respect, allowing intervention so that these property owners can protect their own interests is also justified.

B. Intervention Will Not Create Undue Prejudice Or Delay

Allowing the Applicants to intervene will not cause undue prejudice to the parties or cause any delay. The Applicants have been involved in this dispute since its inception in the Fall of 2023. And this motion is being filed at the very outset of the litigation. The Applicants have no interest in delaying the proceedings or otherwise interfering with the

parties' attempts to litigate this matter. They simply wish to be present to ensure that their interests are protected and not compromised. It is especially appropriate to allow their intervention to prevent multiple and inconsistent rulings. Furthermore, the Applicants' vested interest in this case affords them significant and unique factual knowledge that may be beneficial to the Court and central to the disposition of this case.

CONCLUSION

The present Motion to Intervene should be allowed because the Applicants have a substantial personal interest related to the property which is the subject matter of this litigation and the disposition of this matter without their involvement could impair their ability to protect their interests. Further, their interests are not adequately represented by the existing parties because the Town of Westport has a separate and different set of legal responsibilities that do not completely align with those of the Applicants. Also, the Town has the potential for compromise due to significant financial constraints that could place the Applicants' interests at risk. Applicants' intervention would not cause any undue delay or prejudice, nor would the Applicants' presence interfere with the existing parties' ability to assert their respective claims or defenses. Accordingly, the Court should allow intervention as of right, or in the alternative, with the Court's permission pursuant to M.G.L. c. 40A, s. 17 and Mass. R. Civ. P. 24(a)(2) and 24(b).

The Applicants,
By their attorneys,
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CERTIFICATE OF SERVICE

I hereby certify this 10th day of April, 2024 that a true copy of the foregoing pleading has been served via email to all counsel of record as follows:

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EXHIBIT A-1

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 40C	HISTORIC DISTRICTS
Section 6	CERTIFICATES OF APPROPRIATENESS, NON-APPLICABILITY OR HARDSHIP; NECESSITY; APPLICATIONS AND PLANS, ETC.; BUILDING AND DEMOLITION PERMITS RESTRICTED

Section 6. Except as the ordinance or by-law may otherwise provide in accordance with section eight or said section eight or nine, no building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and

appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission.

EXHIBIT A-2

**BY-LAWS AND
REGULATIONS
OF THE
TOWN OF WESTPORT
MASSACHUSETTS**



Revised October 14, 2022

5804. POWERS, DUTIES, AND RESPONSIBILITIES

Except as otherwise provided in Town By-Laws, the Board of Selectmen shall exercise the executive functions given to the Board under the constitution and the General Laws of the Commonwealth, and such additional powers and duties as may be authorized by By-Law or Town Meeting vote.

The Board of Selectmen's executive responsibilities include, among others, establishing and overseeing Town government personnel and procurement systems, managing Town government facilities, and the conduct of all union negotiations for Town employees.

The Board of Selectmen shall cause the laws, By-Laws, and orders for the government of the Town to be enforced and shall cause a record of all its official acts kept. The Board of Selectmen shall ensure that Town government personnel regulations and procurement systems, as well as the terms of the union contracts are available to the public.

5805. APPOINTING POWERS

5805.1 The Board of Selectmen shall appoint a Town Administrator as the chief administrative officer of the Town and may delegate its authority, from time to time, to the Town Administrator. Nevertheless, the ultimate responsibility and accountability for those delegated powers and duties reside with the Board of Selectmen.

5805.2 The Board of Selectmen shall appoint all Town employees for whom no other appointment or election provision is made in the Town By-Laws or Massachusetts General Laws.

5805.3 The Board of Selectmen shall appoint members of all boards, committees, and commissions, for whom no other appointment or election provisions is made in Town By-Laws or Massachusetts General Laws. The Board shall issue terms of reference for such bodies and establish their reporting requirements.

5806. INTER-GOVERNMENT RELATIONS

Members of the Board of Selectmen shall represent the Town on federal, state, regional, and inter-municipal committees, or may designate a town employee or other person to represent the Town; and/or take any other action relative thereto.

ARTICLE LIX

HISTORICAL COMMISSION BY-LAW

5901. There is hereby established under the Historic Districts Act, General Laws Chapter 40C, with all

the powers and duties of an historic commission, a Westport Historical Commission, consisting of seven members to be appointed by the Board of Selectmen, and including one member from two nominees submitted by the local historical society, one member from two nominees submitted by the Chapter of the American Institute of Architects covering the area, and one member from two nominees from the board of realtors, if any, covering the area. If within 30 days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made by the appointing body, the Board of Selectmen may proceed to appoint the Commission without nominations by such organization. The members of the Westport Historical Commission shall include one or more residents or owners of property in a historic district to be administered by the Commission. Alternates need not be from nominees of organizations entitled to nominate members. Each member and alternate shall continue in office after the expiration of his term until his/her successor is duly appointed and qualified. All members and alternates shall serve without compensation.

5902. There is hereby established under provisions of the Historic Districts Act, one historic district to be known as the "Westport Point Historic District" attached to and made a part of the By Law.

5903. The Commission shall have in addition to the powers and duties of an historic district commission the further powers and duties, subject to appropriation or receipt of money gifts, and may in exercise of any of its powers or duties accept and expand such gifts and employ clerical and technical assistants, or consultants,

- A.** To conduct a survey of Westport buildings and sites for the purpose of determining those of historic significance architecturally or otherwise. Copies of this continuing survey shall be placed in the hands of the Westport Planning Board, the Conservation Board, the Board of Selectmen and the Westport Public Library and periodically updated by the Commission;
- B.** To propose from time to time as they deem appropriate the establishment, in accordance with the Historic Districts Act, of additional historic districts and changes in historic districts;
- C.** To determine an appropriate system of markers for selected historic sites and buildings not already sufficiently marked, to arrange for preparation and installation of such markers, and to arrange for care of historic markers.
- D.** To arrange for preparation and publication of maps and brochures and descriptive material about Westport historic sites and buildings'
- E.** To cooperate with and advise the Board of Selectmen, the Planning Board and other town agencies in matters involving historic sites and buildings'
- F.** To cooperate with and enlist assistance for Westport from the Massachusetts Historical Commission, the National Park Service, the National Trust for Historic Preservation, the Society for the Preservation of New England Antiquities, and other agencies public and private from time to time concerned with historic sites

and buildings;

G. To advise owners of historic buildings in Westport in problems of preservation.

5904. The Commission may recommend to the Board of Selectmen from time to time as needed the appointment of advisory committee of historians and persons experienced in architecture or other arts or in historic preservation or restoration to assist in manner comparable to the National Park Service Advisory Board or Consulting Committee.

5905. The Commission may formulate and publish guidelines for construction or alteration of buildings or structures or appurtenant fixtures in the areas as defined in Section 5 of Chapter 40C of the General Laws.

5906. When taking action under the provisions of the second paragraph of Section 7 of the Historic Districts Act, the Commission shall make its determination within forty-five (45) days after the filing of the application for a certificate of appropriateness, or such further time as the applicant may in writing allow.

5907. The Commission shall adopt rules and regulations for the conduct of its business, not inconsistent with the provisions of the Historic Districts Act or this ordinance.

5908. In case any section, paragraph or part of this ordinance be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

5909. The establishment of the Historic Districts under Section 2 shall not be effective until the first day of third month after this ordinance is ordained.

5910. The Commission should have the powers and duties of a Historical Commission as provided in Section 8D of Chapter 40 of the Massachusetts General Laws.

5911. Limitations on authority of Commission: Except to the extent specifically prohibited by M.G.L., Chapter 40C the authority of the commission shall be limited in that:

A. It shall not have the power to review the following:

1. Terraces, walks, driveways, sidewalks, and like structures, provided that any such structures are substantially at grade level;
2. Walls and fences;
3. Trees, plants, shrubs, hedges, and the like;
4. Storm doors and windows, screens, window air conditioners, and antennae for radio and/or television reception;
5. The color of paint on doors and shutters;

6. The color or nature of materials used on roofs;
 7. Additions, alterations, or appurtenant structures (including but not limited to swimming pools and the like), which are not subject to view from a public street, public way, public park or public body of water.
- B. The public authorities responsible for the maintenance, alteration, demolition, or construction of public school facilities in the district shall not be required to obtain any certificate from the Commission.

ARTICLE LX

STORM WATER EASEMENTS

6001. The Board of Selectmen, following consultation with the Water Resource Management Committee, to the extent such committee may exist from time to time, is authorized to accept on behalf of the Town, without further action by Town Meeting, gifts of land and easements for purposes of draining public ways, provided that no appropriation of funds is necessary for such acquisition.

ARTICLE LXI

DOOR TO DOOR SOLICITORS

6101. DEFINITIONS; APPLICABILITY

- A. As used in this section, the terms “solicit” and “canvass” shall mean and include any one or more of the following activities conducted at residences without the previous consent of the owner:
1. Seeking to obtain the purchase, or orders for the purchase, of goods, wares, merchandise, foodstuffs, or services of any kind, character, or description whatsoever for any consideration whatsoever; or
 2. Seeking to obtain subscriptions to books, magazines, periodicals, newspapers, and every other type or kind of publication.
- B. The provisions of this section shall not apply to officers or employees of the Town, county, state, or federal government, or any subdivision thereof when on official business, or to neighborhood youth and students who solicit for the shoveling of snow or cutting of lawns or similar services to residents, nor shall it be construed to prevent route salespersons or other persons having established customers to whom they make periodic deliveries from calling upon such customers.

EXHIBIT A-3

WESTPORT HISTORICAL COMMISSION
RULES AND REGULATIONS

Approved: January 7, 2008
Updated: June, 2011
Updated: December, 2012

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Annex A. Definitions of:

Altered, Building, Certificate, Commission, Constructed, Demolish, Exterior Architectural Feature, Public Way, Significant Building, Structure, Abutter

Preamble

(i) The Westport Historical Commission (henceforth called the Commission) was established under a Town Bylaw, (the Westport Historical Commission Bylaw - henceforth called Bylaw) dated April 3, 1973, and under the powers of both Massachusetts General Law Chapter 40, Section 8D (Historical Commission) and Massachusetts General Law 40C (Historic Districts).

(ii) The Westport Point Historic District was created by the above cited Bylaw, and boundaries of the District were recorded in Bristol County Registry of Deeds in Book 1667, page 483 on July 9, 1973. The Westport Point Historic District was registered with the Massachusetts Historical Commission effective as of April 3, 1973 and was subsequently enlarged by a vote of Town Meeting on May 4, 2006 and newly recorded in the Bristol County Registry of Deeds in Book 8711, page 44 on July 9, 2007. A copy of the plat map showing the properties included in the Westport Point Historic District is shown in the *Guidelines of the Westport Point Historic District*, henceforth called *Guidelines*. Any reference to Historic District in this document refers to the existing Westport Point Historic District and any local historic district that may be established within the purview of the Commission.

(iii) The Commission maintains and updates a list of significant historical buildings, structures and significant sites in Westport (known as the Westport Historic Inventory) which is in the files of the Commission at Town Hall, in the Town Library, the Building Department and Westport Historical Society.

I. Purpose

A. The purpose of the Commission is to preserve and protect the historical, architectural and archaeological assets of the Town of Westport.

B. The Commission is the Town of Westport's board responsible for community-wide historic preservation, including responsibilities under the Westport Demolition Bylaw.

C. When acting as a Local Historic District Commission, the Commission is the board responsible for regulatory design review within the Westport Point Historic District and any other local historic district that may be established within the purview of the Commission.

II. Membership, Officers and Advisory Committee

A. Membership

1. The Commission shall consist of 7 (seven) Members, appointed by the Board of Selectmen, each for a term of 3 (three) years. The desired composition of the Membership is established in the Westport Historical Commission Bylaw, with a view to facilitate coordination among Town bodies and to involve a range of relevant professional skills. Each Member shall continue in office after the expiration of his or her term until his or her successor is duly appointed and qualified.

2. The Westport Historical Commission Bylaw empowers the Board of Selectmen to appoint up to 7 (seven) Alternates to the Commission. Alternates are encouraged to attend and to participate in the Commission's meetings.

3. In the event that a Member will be absent or is unable or unwilling to act, for any reason, on the matter before the Historical Commission acting in its capacity as an Historic District Commission pursuant to G.L. c. 40C, the Member shall inform the Chair at least two days in advance of the scheduled meeting unless there is an emergency situation. The Chair shall designate an Alternate to act in the Member's place.

4. All Members and Alternates must adhere at all times to the requirements of the State Conflict of Interest Law, G.L. c. 268A and Guidelines For Town Business. All Members and Alternates are responsible for signing a Disclosure Form if there are known conflicts or appearances of conflicts and shall provide a copy of any filed Disclosure Form to the Commission Chair.

5. Attendance shall be recorded in the Minutes for each Commission meeting. Any Member or Alternate who is absent more than 3 consecutive meetings shall provide for the Minutes a written explanation of the reasons for the absences. Attendance records shall be provided to the Board of Selectmen as required.

B. Officers

1. Officers shall consist of: Chair, Vice Chair, Secretary, Treasurer and Clerk. Elections for all officers shall be held each year in July; Members, and Alternates designated to act for absent Members, are entitled to vote. The results of elections shall be reported to the Town Clerk. There are no term limits. The Chair, Vice-Chair and Treasurer shall be chosen from among the list of Members.

2. The *Chair* serves as the spokesperson for the Commission, including correspondence with the public and Town bodies, prepares and posts the agenda in cooperation with the Clerk and Secretary, accepts applications for preliminary reviews, conducts meetings, and oversees the preparation of the annual report, Membership and officer lists and reporting to the Massachusetts Historical Commission. The Chair appoints the Monitors who observe implementation of Certificates of Appropriateness and Hardship granted in a local Historical District. The Chair appoints Alternates to act for absent or recused Members. The Chair oversees the educational and publicity activities for the Commission. The Chair informs the Building Inspector and the applicant of the time and date for the review of any demolition application permits.

3. The *Vice-Chair* substitutes for the Chair as necessary. The Vice-Chair oversees the distribution of the application forms for Certificates and of the *Guidelines* to real estate agents, the Town Building Department, the Commission Bulletin Board and other public places.

4. The *Secretary*:

- (a) records minutes of all meetings and distributes these as required, including to the Board of Selectmen;
- (b) assists the Chair with incoming and outgoing correspondence for the Commission;
- (c) maintains the files of the Commission, including the original approved Certificates;
- (d) maintains a file for each property within the Historic District that contains any applications received, a record of decisions including copies of Certificates granted, and other relevant documentation;
- (e) arranges for date-stamping by the Town Clerk of approved Certificates;
- (f) provides a copy of approved date-stamped Certificates to the applicants and the Town Building Inspector on a timely basis;
- (g) handles the Continuation Request Forms signed by applicants.
- (h) cooperates with the Chair and Clerk in preparation of agenda.
- (i) provides a copy of the signed plans to the Town Building Inspector, the applicant and the Commission's files on a timely basis.

5. The *Treasurer* processes deposit and payment vouchers and makes monthly reports to the Commission. The Treasurer handles the general account and any gift or bequest accounts for the Commission and reports the totals of any gift or bequest accounts. The Commission has no check-writing authority and operates through the Town Treasurer and Town Accountant.

6. The *Clerk* processes all applications for Certificates. The Clerk is responsible for:

- (a) creating application files labeled with name, property address, hearing date(s) ;
- (b) reviewing the submitted date-stamped application to ensure that all required documentation is included; initialing the complete application. If all requirements are not met at time of application deadline, Clerk recommends to the Chair for or against extension of the deadline for that application; notifying applicant by phone and email of the decision and new deadline, as relevant. The Clerk may recommend to the Chair that the application be scheduled only after the application is complete which may mean that the hearing is postponed. The Clerk notifies the Commission at its next meeting of any action taken on incomplete applications.
- (c) communicating with Chair as to number of public hearings requested; recommending carryover of public hearings to another special meeting if necessary;
- (d) submitting meeting notices to Town Clerk to enable posting at least forty-eight (48) hours (Sundays and legal holidays not included) prior to the meeting;
- (e) submitting public hearing notices to the Town Clerk to enable posting at least 14 days (Sundays and legal holidays not included) prior to the hearing date. Note that applications for Certificates of Non-Applicability do not require a public hearing while applications for Certificates of Appropriateness and Hardship normally require a public hearing;
- (f) creating and mailing notices of a public hearing, containing summary of proposed work, to the owner/applicant; specified agents of the owners, if any; abutters; those requesting notification of public hearings; the Town Planning Board and any other persons the Commission may deem necessary;
- (g) assembling and putting into the applicant's file all information relating to the application and the public hearing, including accompanying documents, copy of public hearing notices, a list of abutters notified, and any related correspondence; and
- (h) display on the Commission Bulletin Board, second floor, Westport Town Hall, for public viewing at least fourteen days prior to the scheduled public hearing: copy of the public hearing notice and copy of scale drawings submitted with the application.

7. The Commission may assign Members and enlist other individuals to perform additional duties.

C. Advisory Committee. The Commission may recommend to the Board of Selectmen from time to time, as needed, the appointment of advisory committees of historians and persons experienced in architecture or other arts or in historic preservation or restorations to assist in a manner comparable to the National Park Service Advisory Board or Consulting Committee. The Commission may ask the advice of individual experts (architects, engineers, etc.) to facilitate its review of applications for Certificates.

III. Meetings and Public Hearings, Voting and Records

A. Meetings and Public Hearings

1. All meetings and public hearings are subject to the provisions of the Open Meeting Law, G.L. c. 39, § 23A and § 23B.

2. *Quorum.* Four (4) Commissioners, including Members or Alternates designated to act for a Member, shall constitute a quorum.

3. *Regular meetings* of the Commission will be held each month on a regular basis unless otherwise posted. Notice of date, time and location of the regular meeting shall be provided to the Town Clerk's Office and the agenda shall be posted on the Commission's bulletin board at least 48 hours (excluding Sundays and legal holidays) prior to the regular meeting.

4. *Public hearings* shall be held for applications for Certificates of Appropriateness or Hardship under the authority of the Local Historic District Commission (Section VII below) and for changes to Commission Rules and Regulations and Guidelines. Notice of date, time, location and subject matter shall be posted in the Town Hall at least fourteen (14) days prior to the hearing. In addition, notices of public hearings shall be mailed at least fourteen (14) days in advance to the applicant, abutters as defined in Annex A, (attached hereto, to addresses as shown on tax assessor records, and others requiring notice. Requests for notification for others than the applicant and abutters must be made in writing to the Commission and renewed annually in December.

5. *Special meetings* of the Commission may be held at the call of the Chair or at the request of two other Members. Notice of date, time and location of a special meeting and the agenda of that meeting shall be posted in the Town Clerk's Office at least 48 hours (excluding Sundays and legal holidays) prior to a special meeting.

6. *Emergency meetings* may be held at the call of the Chair or at the request of two Members, if there is an unexpected occurrence or set of circumstances demanding immediate action that relates directly to the functions and responsibilities of the Commission. In this case there are no public notice requirements, but the Commission should attempt to post notice in the Town Clerk's Office before the meeting if possible.

7. *Continuation.* The Commission itself may continue a public hearing to another date if the new date meets the time limits imposed by the Commission Bylaw. The applicant may request a continuation beyond the time limits imposed by the Commission by signing a Continuation Request Form provided by the Commission. In both cases, the date, time, place and agenda for that hearing must be announced publicly during the initial meeting and recorded in the minutes. The continuation hearing is considered to operate under the legal and abutter notification of the initial hearing, and no additional notifications are required. The Commission shall establish a deadline for the submission of any additional or revised materials on a case by case basis, with the intent to assure that these additional materials shall be available and posted at the Town Hall in advance of the continuation hearing to allow the public an adequate time period to consult them. The Commission shall file the Continuation Request Form with the Town Clerk and in the applicant's file.

8. *Cancellation of meetings.* The Chair or other officer of the Commission (in the absence of the Chair), may dispense with a meeting by giving notice to all Members and Alternates designated to act for a Member, and by posting a notice of the cancellation in the Town Hall at least 48 hours (excluding Sundays and legal holidays) prior to the scheduled time.

9. *Site visit.* The Massachusetts Open Meeting Law, G.L. c 39 §23 B, specifically exempts a site visit from the definition of a public meeting in which the general public must be allowed to participate. When a site visit is arranged as a continuation of a meeting or public hearing, it does not require specific additional notices. No decisions can be taken at a site visit. An oral or written summary report on the site visit should be presented at the next Commission meeting and recorded in the minutes.

B. Voting

1. All Members and Alternates designated to act for a Member shall be entitled to vote except as noted below. Proxy or absentee voting is not allowed. Alternates who are not acting on behalf of a Member are expected to participate in all aspects of Commission discussions and deliberations, but are not entitled to vote.

2. In the case of a continuation of a public hearing on an application for a Certificate within a local Historic District, a Member or Alternate designated to act for a Member may vote on the application only if s/he has attended all sessions of the public hearing or has reviewed the filmed meeting.

3. If a Member position is vacant and not yet filled by appointment by the Selectmen, no Alternate can be designated by the Chair to vote for that Member position

4. Decisions shall be made by simple majority vote present *except* in the case of the granting of a Certificate of Appropriateness, Hardship or Non-Applicability. In case of a tie, the motion is not approved.

5. Four (4) affirmative votes, being a majority of the Commission Members and Alternates designated to act for a Member(s) as required by G.L. c. 40C §11, shall always be required to approve a Certificate of Appropriateness, Hardship and Non-Applicability. If the affirmative votes are less than four in number, the Certificate is denied.

6. Members and Alternates are subject to the requirements of the State Conflict of Interest Law, G.L. c. 268A. The Commission acknowledges the rights of Members and Alternates to an exemption from these requirements under G.L. c. 268A §19(b)(1).

7. In addition to the requirements of G.L. c 268A §19, the Commission acknowledges that Members and Alternates may represent themselves in discussion of a particular matter in which they may have conflict of interest. However the Member or Alternate must not sit with the Commission during public discussion, Commission deliberation or voting on that matter, and may not take official part in the Commission deliberations and voting on that matter. It is strongly recommended that the Member or Alternate leave the room for the voting process.

8. In addition to the requirements of G.L. c. 268A §23, the Commission acknowledges that Members and Alternates may meet the requirements of the law by stating in advance that there is an appearance of a conflict of interest on a particular matter. However the Commission strongly recommends that the Member or Alternate abstain from deliberations and voting on that matter as for Chapter 19.

9. Members, or Alternates designated to act for Members, may abstain from a vote at their own discretion.

C. Records

1. *Minutes.* Minutes shall be recorded for all meetings and public hearings. Minutes shall constitute a permanent record stating attendance of Members and Alternates and signed public attendance, including abutters who identify themselves at a public hearing, Commission decisions, reports from individual Members on relevant matters that transpire outside of meetings or public hearings, resolutions, the basis for decisions on applications for Certificates and a description of any required revisions to the proposed plans, and the votes of each Member and Alternate designated to act for a Member. The date, time, and place of the next meeting shall be stated at the end of each set of Minutes. Copies of the approved Minutes shall be filed at the Commission offices at Town Hall and provided to the Office of the Selectmen.

2. *Certificates.* Certificates require approval by four affirmative votes by Members or Alternates acting for a Member of the Commission. Certificates awarded by the Commission shall be signed by the officer Chairing the meeting, and witnessed by the person who was the Secretary or his/her designee for the meeting at which the decision was made. The Certificate shall include a listing of agreed amendments to the proposal and any further conditions to be met by the applicant.

3. *Building Plans.* After approval at a public hearing, each page of the three copies of the approved building plans shall be signed and dated by at least four Members and/or Alternates designated to act for a Member, who voted at the meeting at which the decision was made. After signing and dating by the Commission, one copy of the approved and signed plans shall be returned to the applicant, one shall be delivered to the Building Inspector when a building permit is required and one, along with any supporting material presented for the Commission's consideration, shall be placed in the Commission files.

4. *Annual Report.* The Commission shall prepare an annual report for the Annual Town Report. A copy of the annual report and updated lists of Commission Members shall be sent to the Massachusetts Historical Commission.

5. *Copies of Commission Records.* Copies of Commission records, including final minutes and signed certificates, shall be made available to the public, upon application to any Member of the Commission. Any expenses involved will be borne by the requesting party.

IV. Establishment of Commission Rules and Regulations

A. The Commission may set its Rules and Regulations according to Article 7 of the Westport Historical Commission Bylaw.

B. The Commission from time to time may amend its Rules and Regulations. Such amendment requires a public hearing.

V. Powers and Duties as an Historical Commission

- A. The Commission may:
1. advise and make recommendations to the Board of Selectmen on any matter having an impact on the historical or archeological assets of the Town of Westport (Chapter 40, Section 8D);
 2. cooperate with and advise the Board of Selectmen, the Planning Board and other town bodies in matters involving historical, architectural or archeological assets in the Town of Westport;
 3. accept and expend money and/or gifts and employ clerical and technical assistants or consultants;
 4. conduct surveys of Westport buildings and sites for the purpose of determining those of historic significance;
 5. propose as it deems appropriate the establishment of additional historic districts and changes in historic districts;
 6. determine an appropriate system of markers for selected historic sites and buildings;
 7. arrange for preparation and publication of maps and brochures and descriptive material about Westport historic sites and buildings;
 8. cooperate with and enlist assistance from the Massachusetts Historical Commission, the National Park Service, the National Trust for Historic Preservation, Historic New England, (and/or their successor agencies, if any), and other agencies, public and private, from time to time concerned with historic assets and resources in the Town of Westport;
 9. advise owners of historic buildings and structures in the Town of Westport about problems and solutions for historic preservation;
 10. acquire in the name of the Town of Westport by gift, purchase, grant, bequest, devise, and lease or otherwise the fee simple or lesser interest in real or personal property of significant historical value and manage the same.

VI. Authority Under Westport Demolition Bylaw

- A. Demolition Bylaw.
1. The Westport Demolition Bylaw establishes procedures for delaying the issuance of permits for the demolition of significant buildings in the Town of Westport. Demolition refers to any act of pulling down, destroying, removing or razing any building or a substantial portion thereof. The list of significant buildings is found in the Historical Inventory that was prepared by the Commission. Copies of the Historical Inventory are available in the Commission Offices, at the Building Inspector's offices and at the Westport Public Library.

2. For significant buildings *outside* a designated local Historic District, the Commission has authority to delay demolition of a significant building if the Commission determines that the demolition would be detrimental to the historical or architectural heritage or resources of the Town. The Commission is empowered to delay issuance of a demolition permit for up to 365 days to allow time to attempt to find ways to save the significant building. The Commission does not have veto power, only the power to impose a delay in certain circumstances to allow more time to find other solutions.
3. For any building or structure *within* a designated local Historic District, the Commission has authority to approve or deny (and not just delay) demolition (See section VII below).

B. Procedures.

1. *Buildings and structures within a designated local Historic District.* Applicants may not obtain a demolition permit from the Building Inspector without a Certificate from the Commission. A Demolition requires either a Certificate of Appropriateness, Hardship or Non-Applicability.

2. *Significant buildings outside the local historic district.* Upon receipt of an application for a demolition permit for a significant building *outside* a designated local Historic District the Building Inspector shall forward a copy to the Commission. The Chair shall inform the applicant and the Building Inspector when it will take up the demolition application. Normally that would be at the Commission's next scheduled meeting, assuming that there is sufficient time to include the item on the agenda. If there is not sufficient time, it will be considered at a special meeting, but in any case, within 30 days of receipt of the application. In addition to the application for demolition, the applicant may request the Commission to take into consideration factors of hardship that may arise due to any delay.

3. If the Commission determines that demolition of the significant building *outside* a designated Historic District would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall inform the Building Inspector and the applicant of its determination in writing, and thereafter, as provided by the Westport Demolition By-law, the Building Inspector may proceed with his own consideration of the application. If the Commission determines that demolition of the significant building *outside* a designated local Historic District would be detrimental, the Commission shall inform the Building Inspector and applicant in writing that the issuance of a demolition permit must be delayed by up to 365 days. The purpose of the delay is to allow additional time to find other solutions, including: (a) developing possible ways to use the significant building in the applicant's plans; or (b) finding a purchaser willing to relocate, preserve, rehabilitate or restore the building. The Commission will use its resources to help the applicant find alternative solutions. If no alternative solution (acceptable to the applicant) is found within the 365 day delay, the Building Inspector may proceed with his own consideration of the permit application, without further intervention from the Commission.

4. In cases where the significant building *outside* a designated local Historic District is considered by the Building Inspector to pose an imminent threat to public safety, the applicant may request an emergency demolition permit and, pursuant to the Westport Demolition By-law, the Building Inspector will apply to the Commission for an immediate decision. In that case, the Commission shall hold an emergency meeting to consider the application.

C. *Enforcement.* In the event the Commission takes cognizance of a violation of the Demolition By-law within its jurisdiction as an Historical Commission, the Commission shall notify the Board of Selectmen and the Building Inspector for appropriate enforcement.

VII. Powers and duties as a Local Historic District Commission

A. Introduction.

1. Buildings and structures in a designated local Historic District and visible to a public way may not be altered, constructed, or demolished without a Certificate issued by the Commission, whether or not such work requires a building permit from the Town Building Inspector. See Annex A for definitions. "Visible to the public" includes the view from a public street, public way, public park or public body of water. Vegetation, landscaping, fences, walls, trellises, and the like are not considered to provide a barrier to visibility.

2. If an owner of a property in a designated local Historic District either: (i) fails to obtain a Certificate for alterations, construction or demolition under the Commission's purview, or (ii) fails to observe the conditions of the Certificate, the Commission shall first notify the owner in writing that the requirements of the Bylaw and/or Certificate are not being met. The owner will be given one week to respond to this notification with a plan to correct the situation, such plan to be delivered to the Chair. The owner will be requested to present the proposed plan to the next Commission meeting. If there is no response from the owner within that time period or the proposed plan (as it may be modified during the discussion at the Commission meeting) is found inadequate, the Commission may declare the situation on the site to be illegal under G.L. Chapter 40C:6 and apply the available remedies under G.L. c. 40C §13. The Commission may refer the matter to the Building Inspector for enforcement of the conditions of the building permit.

3. Whoever violates any of the provisions of G.L. c. 40C shall be punished by a fine not exceeding three hundred dollars (\$300) for each offense. Each day any violation continues shall be deemed a separate offense.

4. The Commission shall not prevent a property owner from meeting requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition.

B. Guidelines.

1. The Commission shall publish Guidelines which, among other things, shall include: (a) the scope of its review authority (b) any specific limitations on its review authority, (c) its guidelines for determining the appropriateness of any proposed alterations, construction and demolition, and (d) the procedures for the application process for a Certificate.

2. When deemed appropriate, and made known to the public in advance in a public hearing, the Commission may allow standing exemptions of certain construction and alterations from review by the Commission over and above those specifically exempted in Chapter 40C and the Westport Historical Commission Bylaw. For example certain lighting fixtures or a roster of colors of paint may be specified to meet the requirements of the Commission and would need no review for any applicant.

3. Members and Alternates may respond to routine questions about the Guidelines, but shall refer non-routine questions to a meeting of the Commission.

C. Procedures.

1. The Commission offers three types of Certificates – Appropriateness, Hardship and Non-Applicability (See Sections D, E, and F below). The *Guidelines* state the conditions that determine which Certificate may be required.

2. *Application Process. Guidelines* and application forms shall be made available on the Commission bulletin board, Second Floor Town Hall and in the Building Department.

3. The Commission shall charge a filing fee for applications for Certificates of Appropriateness and for Certificates of Hardship. There is no fee for filing for Certificates of Non-Applicability. The fee schedule shall be established by May for the upcoming fiscal year.

4. *Applications for Certificates shall be filed with the Selectmen's Office.* The date of the filing of an application normally shall be the date on which an application is received at the Board of Selectmen's Office and date stamped. However if the application does not contain all the required documents stated in the Guidelines the date of filing shall become the date on which these documents are added to the files and date stamped. Applications will be checked by the Clerk who will notify the applicant if they are incomplete. Incomplete applications may lead to delay and/or to denial of a Certificate.

5. An applicant may withdraw the application at any time through a written request. The Commission shall record a vote for the Minutes accepting the withdrawal. Any subsequent applications shall require the full process and fees for a public hearing. There will be no refund of the filing fees.

6. The Commission shall determine within fourteen (14) days of the receipt of the complete application if a public hearing is necessary. Most applications require a public hearing and notices will be sent promptly. (See IIIA4.) Applicants will be informed if a public hearing is not required.

7. A public hearing on an application for a Certificate of Appropriateness or Hardship may be waived: (a) in writing by all persons entitled to notice, and (b) by the Commission if the Commission determines that the exterior architectural feature involved or its category or color is so insubstantial in its effect on the historic district that it may be reviewed by the Commission without public hearing on the application. However, if the Commission votes to dispense with a public hearing on any application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected and ten (10) days shall elapse after the mailing of such notice before the Commission may act. A public hearing is not required for applications for Certificates of Non-Applicability. These applications will be considered at a meeting of the Commission during the business portion of the meeting.

8. *Preliminary review by the Commission.* The applicant may request a preliminary review of proposed plans by the Commission at a meeting before s/he files a formal application. The Commission strongly recommends such a review for major changes such as additions and new construction. A verbal or written request for a preliminary review should be made by the applicant to the Chair and received at least seven days in advance of the regular meeting in order to be placed on the agenda. Materials presented should be adequate to ascertain at least the broad outlines of the proposed project and the proposed changes to the site. During the preliminary review, the Commission may offer suggestions and advice on aspects of the proposed plan, including ways to enhance its appropriateness.

9. No votes can be taken by the Commission at a preliminary review. The preliminary review is not considered part of the public hearing process and does not require notice, but does require being placed on the agenda. Public hearings have first priority on the agenda. Times for preliminary reviews shall be set only after times for initial public hearings and continuations of public hearings are set.

10. *Monitors.* The Chair shall nominate two Members and/or Alternates designated to act for a Member as *Monitors* for each approved Certificate from among the attendees at the public hearing for the Certificate. The names of the Monitors shall be recorded in the Minutes and on the Certificate. The duties of the Monitors include: (a) observing on a regular basis if the project is in compliance with the terms of the Certificate; (b) providing a channel of communications between the property owner and the Commission; and (c) reporting status of project to the Commission on a regular basis. Monitors do not have any decision-making authority on their own. They must report immediately to the Chair all requests from the property owner and possible violations. A special meeting may be called to address such issues. The Chair may place the issue on the agenda of the next regular meeting as appropriate.

11. *Applicant and the Building Inspector.* The Commission shall provide a copy of the Certificate and the signed plans to the Building Inspector. The applicant provides "For Construction" plans to the Building Inspector and is responsible that the "For Construction" plans are consistent with the features covered by the Commission's approval and correspond to the requirements of the Certificate.

12. *Denial.* When the Commission does not approve an application, the Commission *may* make recommendations for changes in the applicant's proposal that, if made, would make the application acceptable to the Commission. In all cases, the Commission shall record the reasons for the disapproval in the minutes of the meeting when the decision is made and send notice of and reasons for the decision to the applicant. The Commission also must consider whether the application merits a Certificate of Hardship.

13. *Expiration of Certificates.* For work that requires a building permit, the property owner must apply for a building permit within twelve months of the date of issue of any Certificate. If application for a building permit is not made within twelve months, the Certificate expires and the property owner must apply for a new Certificate. A new application will need to fulfill all requirements and guidelines that may be in force at that time; there will be no grandfathering of previously approved plans that have not been completed. All Certificates shall be valid for the period of the building permit. As a Certificate is granted to a person, not to properties (like the building permit), all Certificates expire upon sale of the property. Any previously approved work not yet completed at the time of the sale must be resubmitted to the Commission for approval.

14. *If no building permit required.* For work that does not require a building permit, the Certificate shall expire 24 calendar months after the date of issuance of the Certificate or at sale of the property whichever shall come first. This 24 month deadline may be extended by the Commission on a case by case basis. If the approved work is not completed before the expiry, a new application must be filed for any work not yet completed.

15. *Transfer of Certificates.* Certificates are not transferable to new owners. New owners must make a new application to the Commission for any uncompleted work.

16. *Changes to Approved Plans.* Applicants cannot make changes to approved plans and/or Certificates without prior authorization from the Commission at a public meeting. If an applicant wishes to make changes to specific features covered by the Certificate and the signed plans, the applicant shall inform at least one Monitor (who will contact the second Monitor and the Chair). The three may advise the applicant as to what type of application s/he should submit to the Commission, if any. All actions must be reported to the full Commission at the next meeting. The Commission may hold a special meeting to consider such matters.

(a) If the Commission determines that the proposed change to an already issued Certificate of Appropriateness or Certificate of Hardship is substantial, a new public hearing is required. Applicants may anticipate this requirement by applying for such a Certificate in a timely manner.

(b) If the Commission determines that the change is insubstantial but within its purview, it may vote to dispense with a public hearing, but must give notice to all those deemed to be materially affected (as set out in VII.C.7 above) and wait ten (10) days after the mailing of such notice before it can act.

(c) If the Commission determines that the change is exempt from Commission review it may issue a Certificate of Non-Applicability at that meeting.

17. *Additional work.* If an applicant wishes to undertake additional work subject to the Commission's review that was not included in the plans submitted to obtain the original Certificate, a complete application for the additional work must be submitted. The Commission will then handle the application when it is received according to the procedures for the relevant type of Certificate.

D. Certificate of Appropriateness.

1. The Commission may impose conditions and limitations on the applicant under the terms of a Certificate of Appropriateness, and may require architectural or plan modifications.

2. If at the public hearing, the Commission decides that the agreed changes are too substantial to be made easily understandable on the basis of a hand-markup of the plans, the Commission may require the applicant to resubmit two copies of the plans revised to reflect the Commission's decision. This may require a continuation of the public hearing (see III A.7. above). If the continuation is not requested by or agreed to by the applicant, the Commission may deny the application and require that a new application be submitted.

3. The Commission may make recommendations (beyond those imposed as conditions and/or limitations on the Certificate) for additional changes to the design, arrangement, texture, materials, or similar features, to enhance further the proposal's appropriateness. These are not binding upon the applicant.

4. In the case when an application for a Certificate of Appropriateness is not approved, the Commission shall consider if the application meets the criteria for a Certificate of Hardship.

E. Certificate of Hardship

1. A Certificate of Hardship may be issued to an applicant on the basis of the criteria set forth in G.L. 40C §10 in addition to the criteria necessary to obtain a Certificate of Appropriateness. The additional criteria are: the Commission must determine (a) whether, owing to conditions especially affecting the building or structure involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the application; and (b) whether

such application may be approved without substantial detriment to public welfare and without substantial derogation from the intent and purposes of G.L. c.40C. Applicants must provide sufficient evidence to the Commission that these two criteria have been met by the applicant and the proposal.

F. Certificate of Non-Applicability

1. The Commission may consider an application for a Certificate of Non-Applicability at a Commission Meeting or a public hearing; in most cases a public hearing is not required. The Commission may also delegate authority to approve Certificates of Non-Applicability to the Chair and Secretary jointly, under circumstances described below.

2. A Certificate of Non-Applicability may be issued for proposed construction, alteration or demolition that does not involve any “exterior architectural features” as defined in Annex A. The applicant must show evidence that the project is outside the purview of the Commission.

3. The original Westport Historical Commission By-Law established a list of activities outside the Commission’s purview (e.g., terraces, walks, driveways, etc. being structures substantially at grade, color of paint on doors and shutters, work not visible from a public way, color or nature of roof materials, etc.). In addition, MGL 40C: 9, Section 9 establishes that Commission powers shall not be construed to prevent the ordinary maintenance, repair or replacement of any architectural feature within an historic district which does not involve a change in design, material, color or outward appearance.

4. Upon receipt of an application for a Certificate of Non-Applicability, the Chair and Secretary shall jointly review the application to evaluate whether the project is outside the Commission’s review authority. They may discuss the matter with the applicant, visit the site if desired, and review the evidence presented to verify eligibility for a Certificate of Non-Applicability. If the two agree that the proposed project clearly falls outside of the Commission’s review authority, they shall issue a Certificate of Non-Applicability to the applicant, and report the matter under General Business at the next Commission meeting. The Secretary also shall provide copies of the Certificate of Non-Applicability to the Building Department, because projects outside of the Commission’s review authority may require a building permit (e.g., reroofing, window replacement, work not visible from public way, etc.).

5. If the Chair or Secretary, individually or jointly, determines that the case for eligibility for a Certificate of Non-Applicability is not clearly established, they shall refer the matter to the next Commission meeting for its determination. If the Commission determines at that meeting that the specific features or components of proposed construction, alteration, or demolition do not need approval by the Commission, the Commission shall issue a Certificate of Non-Applicability, copied to the Building Department.

6. If any of the features covered by the application for a Certificate of Non-Applicability are determined to be subject to the Commission’s review authority, the applicant shall be required to apply for a Certificate of Appropriateness or a Certificate of Hardship as appropriate, before proceeding with the proposed construction, alteration, or demolition. In this case, a public hearing is required.

G. Enforcement and Coordination with Town Officials

1. *Town of Westport Officials.* The Commission shall request that in the event a duly authorized officer identifies an unsafe or dangerous condition in a building or structure in a local Historic District, such officer shall report to the Commission and the Commission shall offer its assistance in determining an appropriate response, which may include convening an emergency meeting with concerned public officials and property owners and/or their designated representatives.

2. *Building Inspector*

(a) For alterations, construction or demolition subject to Commission review and which require a building permit, the Building Inspector of the Town of Westport is *de facto* the next line of enforcement of Commission rules and regulations, guidelines and decisions. Just as the Building Inspector cooperates with and coordinates with the Board of Health and the Conservation Commission to ensure that the proposed plans are acceptable to those Town bodies, the Building Inspector ensures that no building permit is issued in an Historic District for plans that have not received a Certificate from the Commission. This is effected by the requirement of the Building Inspector that plans (including any amendments) presented to him for approval are already cleared and signed off by the relevant Town bodies, including the Commission.

(b) The Building Inspector is the enforcement officer of the Westport Demolition By-law.

(c) If there are occasions when there are differing views or uncertainties about what was approved by the Commission or possible conflicts between Building Code requirements and parameters established in the Certificate issued by the Commission or the plans as signed off by the Commission, the Building Inspector and the Chair will consult to establish a mutually agreeable process to reach a solution on an expedited basis. The Chair will inform the Commission Members of any such occasions, and the Commission will meet, on an emergency basis if needed, to decide how to proceed.

3. *Board of Selectmen.* For those issues that relate to a matter that does not involve a building permit or when there are issues beyond the capacity of the Commission to resolve, the Commission shall turn first to the Board of Selectmen and make recommendations to them for appropriate follow-up according to the Town Bylaws.

4. *Non-criminal Disposition of Violations in District Court.* The Commission may exercise the procedures provided pursuant to Mass. G.L., C.40§21D for non-criminal disposition of violations of the Commission in District Court.

5. *Superior Court:* In the event the Commission takes cognizance of a violation of the Commission Bylaw, the Commission may notify the Board of Selectmen and request the assistance of Town Counsel to file an enforcement action in Superior Court, pursuant to Mass. G.L. c. 40C §13.

H. Appeal

1. G.L. c. 40 §12A allows that any applicant aggrieved by a determination of the Westport Historic District Commission may, within twenty days after the filing of the notice of such determination with the Westport Town Clerk, appeal to the Superior Court sitting in equity for Bristol County.

Annex A.

Definitions The following definitions are consistent with the Massachusetts General Law (MGL), Chapter 40C and the Westport Historical Commission By-Law:

- (a) "Altered" includes the words "rebuilt, reconstructed, restored and demolished" and the phrase "changed in exterior color."
- (b) "Building" means a combination of materials forming a shelter for persons, animals or property.
- (c) "Certificate" means a Certificate of Appropriateness, a Certificate of Hardship and a Certificate of Non-Applicability.
- (d) "Commission" means the Commission acting as the historic district commission and/or the historical commission.
- (e) "Constructed" includes the words "built, erected, installed, enlarged, and moved."
- (f) "Demolish" means the destruction of a building or a substantial portion thereof.
- (g) "Exterior architectural feature" means such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, and is not specifically excluded from review by the Westport Historical Commission Bylaw, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.
- (h) "Public way" means a public street, public way, public park or public body of water.
- (i) "Significant Building" means any building included on the Westport Historical Inventory compiled by the Commission.
- (j) "Structure" means a combination of materials other than a building, not limited to but including signs and raised septic mounds, and excluding fences, walls, terraces, walks, driveways and like structures that are substantially at grade.
- (k) An "abutter" for purposes of the Commission is defined as including owners of properties directly across a private or public road, path or driveway, and all properties within 70 feet of the applicant's property boundary.

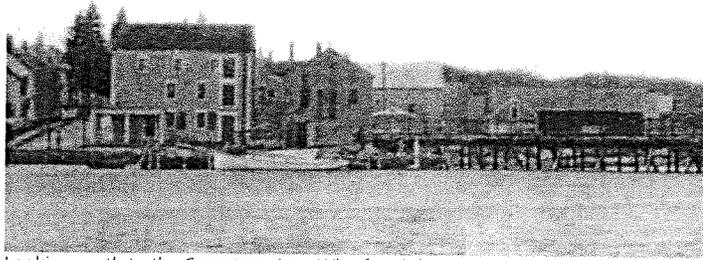
EXHIBIT A-4



Guidelines for the
Westport Point Historic District

TO PRESERVE AND PROTECT

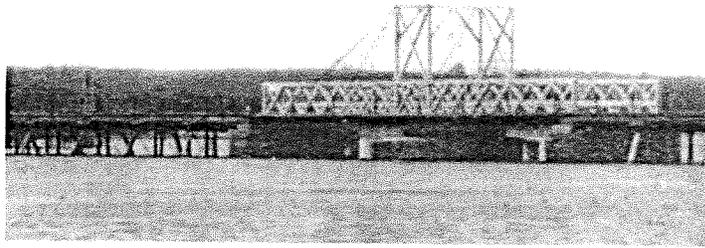
Westport Historical Commission, June 2017



Looking north to the Cory store, Lees Wharf and the Westport Point Bridge

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1. THE WESTPORT HISTORICAL COMMISSION AND THE WESTPORT POINT HISTORIC DISTRICT

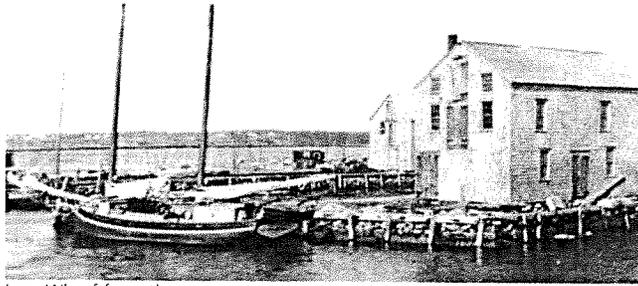
These Guidelines are designed to clarify the purposes and procedures of the Westport Historical Commission (WHC) and to provide a guide for Westport Point Historic District (District) owners when considering changes to their properties. In 1973, a Westport By-Law was passed authorizing the creation of the WHC and the District. It was passed pursuant to The Historic Districts Act, Massachusetts General Laws Chapter 40C, which was created to protect and preserve the historic resources of the towns and cities of the Commonwealth by authorizing such towns and cities to establish a local review process to encourage and ensure historically compatible alterations. The WHC has the authority to review changes to all buildings and structures within the District that are visible from a public way and not specifically exempted.

When overseeing the District the WHC has the following mandates:

- To preserve and protect the distinctive characteristics and settings of buildings and structures at Westport Point (the Point) significant to the history of Westport and to the Commonwealth of Massachusetts.
- To assure that alterations and additions to all buildings and structures are not incongruous to the historic aspects or the architectural characteristics of the existing building or structure or its surroundings.
- To assure that new construction is compatible with neighboring buildings and fits into the context of the District.

WHC members and alternates are appointed by the Board of Selectmen. Its seven members represent, wherever possible, different professional abilities and interests, including realtors, architects, and members of the Westport Historical Society, preservationists, and owners from the District. Members serve staggered three-year terms and are supported by seven alternate members.

Westport Historical Commission, June 2017



Lees Wharf from the water

2. HISTORICAL AND ARCHITECTURAL BACKGROUND

The first European explorers to see the Point found it cleared of trees and used as farmland. Evidence suggests that Native Americans summered here, fishing and farming, and that they called the Point "Pacquachuck." This has been interpreted to mean "cleared hill" or "quahog." No Europeans lived at the Point for about one hundred years after the Pilgrims landed. In 1700, Christopher Gifford, a Quaker from Sandwich, purchased 64 acres of land from Daniel Willcox. Willcox had the land from his father-in-law, John Cooke, the son of Francis Cooke who was a Mayflower passenger and purchaser of one of the original 800-acre parcels of land in Dartmouth acquired from Native American inhabitants. In 1720 the Town laid out a public landing at the Point, and Timothy Macomber ran ferry service from it to the Horseneck Beach area for farmers whose cattle grazed the marsh. The Giffords built a "Great Gate" by their homestead to collect tolls on the road laid out by the Town but built on their land. The gate stood near 1994 Main Road which was the site of the Gifford family cemetery until the 1830s. Until 1770 the only house on the Point, generally land south of Hotel Hill, was on the Christopher Gifford farm.

While small docks had existed for decades along both branches of the Westport River, by 1770 more space for docking and shipping was needed making Point land too valuable for strictly farming. The Point was clearly the best site for the new enterprise of whaling, its peninsular form being perfect for wharves to accommodate docking of whalers. Land adjacent to the wharves was needed for buildings to store whale oil as well as for shipbuilding, coopering, blacksmithing, and other associated industries. The first to capitalize on the Point's advantages were Stephen Davis and several of his brothers who were shipbuilders and traders from Assonet. They purchased land at the tip of the Point from the Gifford family in 1770 and laid out wharves and seven or eight house lots with water access on the west side of the road. At the same time, the Gifford family sold house lots and "industrial lots" on the east side of the road.

By 1800 the first building phase at the tip of the Point was completed with some fifteen houses on the street or waterfront along with new wharves, industrial shops and stores. Included was a windmill for power, a blacksmith shop making ship fittings, a distillery producing the necessary drink



Looking south around 2018 Main Road

for sailors and laborers, several coopering and carpentry shacks, and a number of general stores selling commercial and retail goods. The American Revolution cast off British restrictions against trade in American vessels and opened the Point to general shipping as well as whaling. Many of the small, closely built houses at the tip of the Point were “spec built” that is, erected by a builder to be sold for profit, a certain sign of how inviting a commercial site the Point had become. These houses conveniently boarded sailors making a living by whaling or coastal trading. Others housed merchant families or owners of the mini-industries that whaling and shipping required.

A second building phase followed the War of 1812, the end of which had sparked seafaring and speculative wealth. Captains built larger Federal and Georgian houses along the street to the present Post Office in the 1820s and 1830s. Christopher Gifford III used his land sale profits to erect a rustic Georgian “mansion” in place of the 1720 farmstead.

The third phase of growth occurred during the economic heyday of the 1840s. Enriched sea captains and agents built Greek Revival style homes on lots carved from the dissolved Gifford estate. These two- and three-story, gable-to-street houses differed from earlier styles in their celebration of America’s democratic virtues, but they made themselves harmonious with the houses already present. They kept the English tradition of town design that placed houses right on the street instead of far back on a lawn as in modern suburbia. This “built” environment of neighborly houses that focused on the common life of the street reflected the close relations of people who worked together, intermarried, and often worshiped together.

The next phase of development came after the Civil War when the refining of kerosene and the growth of railroads reduced the profits from whaling and coastal trading. The Point began a slow slide into a poverty which persisted for several decades and eventually would be relieved by rum-running and the advent of summer people. Indeed, summering became an important local industry, continuously enlivening life at the Point even if ambivalently regarded. It provided income for farmers, owners of guesthouses, lot sellers, fishermen, boat builders, and house builders. Summering also bore fruit in local architecture. In 1869 the New York banker, William Valentine, built an Italianate villa in a “park” in the middle of the Point. The scale and



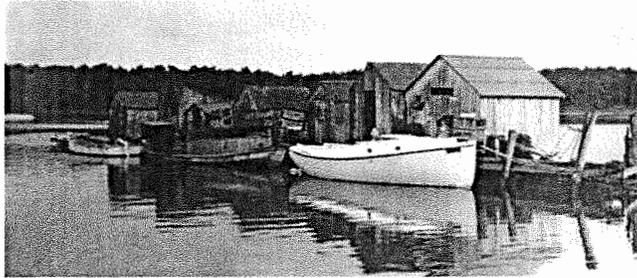
Looking north around 1973 Main Road

siting of this summer residence were unique at the Point. Most summer homes were more modest or off the main road. So, while summerhouses and summer money filled a few empty lots and purses, these intrusions did little to alter the dominant architectural character and culture of the Point. The old Cape, Georgian, and Greek Revival houses retained their original conditions, maintaining the historical character of Westport Point.

In recent years, a new phase of culture has come to the Point and with it a new pressure on its architecture. The rise in property values encouraged many older families to sell their houses, and the unique beauty of the natural and "built" environment attracted many retirees and second homebuyers. A sign of this new culture is that the former orientation of a working neighborhood related to Westport River and Harbor has changed to a recreational orientation by residents for whom the Point may not be their primary residence. This change in cultural orientation has set the challenge for the WHC and residents alike: how best to maintain the beauty, charm, and historic authenticity of the "built" environment while allowing owners to enjoy modern living without sacrificing architectural integrity.

In 1973, buildings and structures at Westport Point were named to the State Register of Historic Places, and the Westport Point Historic District, under the review authority of the Westport Historical Commission, was designated as a local historic district. In further recognition of its unique historical character, buildings and structures in Westport Point along Main Road, some of which are not in the District, were named to the National Register of Historic Places in 1992.

Since then, the WHC has worked diligently to maintain the beauty, charm and historic authenticity of the Point for the benefit of residents and visitors alike, and hopes to continue to do so for the benefit of generations to come.



Fishermen's shacks at Westport Point

3. BASICS FOR OWNERS

A. APPLICATION FOR A CERTIFICATE

No exterior work may be initiated without a Certificate from the WHC. The Westport Building Department will not issue a building permit without a Certificate. Changes initiated without a Certificate may be stopped by the Building Department and the owner may be subject to fines, and to a Superior Court order requiring restoration of work done in violation of this law.

B. TYPES OF CERTIFICATES

Certificate of Appropriateness: Required for exterior alterations, unless specifically exempted under the WHC By-Law and written into these Guidelines.

Certificate of Non-Applicability: Issued for projects exempted from review by the WHC, some of which do not require a building permit.

Projects Exempted from Review by the WHC (as written into MGL 40C and Westport Historical Commission Bylaw):

- Terraces, walks, driveways, sidewalks, and like structures substantially at grade level
- Walls and fences
- Trees, plants, shrubs, hedges, and the like
- Storm doors and windows, screens, window air conditioners, and antennae for radio/television
- Color of paint on doors and shutters
- The color or nature of materials used on roofs
- Additions, alterations, or appurtenant structures (including but not limited to swimming pools and the like), which are not subject to view from a public way
- Ordinary maintenance or repair, or like for like replacement, of any exterior architectural feature or detail of a building, some of which do not require a building permit
- Requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition

Certificate of Hardship: A certificate exempting a project undertaken by a property owner for whom compliance would impose a significant hardship. Requires (a) detailed documentation of specific hardship to the property owner and (b) that the proposed project does not substantially conflict with the intent and purposes of Massachusetts G.L. 40C. This Certificate is rarely issued. Applicants should



View north to the town docks from Westport Point bridge

Speak directly with the Chair of the WHC before making this application.

C. APPLICATION PROCESS

Application forms are available on the WHC website, and the WHC bulletin board, second floor, Town Hall. The applicant is strongly advised to read the instructions printed on the reverse of the application before completing the form. Incomplete information and documentation may result in delay of a scheduled hearing.

An application (with required documentation) for a Certificate of Appropriateness or Hardship must be submitted three (3) weeks prior to the hearing date to allow fourteen (14) days for public notification of abutters and posting a legal notice of hearing in a local paper (*Shorelines*). Such applications must be submitted to and be date-stamped by personnel in the Board of Selectmen's Office to assure timely processing.

For a Certificate of Non-Applicability, an applicant may contact the Chair of the WHC at least seven (7) days prior to a scheduled meeting to be included on the agenda of the meeting, and present an application with supporting documentation at that scheduled meeting. Chair and clerk can issue this certificate without waiting for a full meeting.

The submission of an application expressly authorizes site visits by members of the WHC.

D. REQUIRED DOCUMENTATION TO ACCOMPANY THE APPLICATION FORM

Drawings of the proposed work and site plans

For new construction and additions, an applicant must submit three (3) sets of architectural scale drawings at 1/4 inch scale for both existing and proposed work that include a site plan, exterior elevations, structural and foundation work, window and exterior door descriptions, the types and color of exterior walls and roof material. Architectural details such as window trim, corner boards, and cornices must be specified. An applicant must also submit one (1) set of the architectural drawings reduced to 8.5" x 11". The site plan should be drawn to scale and show grade elevations, existing buildings and structures such as decks, walkways, docks, seawalls, stonewalls, septic mounds, swimming pools, and any proposed changes to the site.



View north around 2028 Main Road

Project checklist

The applicant must submit a completed project checklist, which describes for each element of the proposed project, the material and color, and, where applicable, the dimensions. The checklist, as amended if necessary during the public hearing, will be attached to the approved Certificate and used by the project monitors to verify that the work corresponds to what was approved.

Photographs

Photographs of all elevations of an existing property affected by changes, should be submitted. Photographs must also document any other buildings on the site and on properties abutting the site. Photographs may also be used to illustrate the history of the building and/or show a building in the context of its neighbors.

Minor Alterations

For proposals such as alterations to existing windows or doors, sketches with dimensions of the proposed changes and with photographs of existing elevations may be submitted. Catalog cuts may be used to show style, size, and features of windows, doors, shutters, light fixtures, and other manufactured products.

Fee

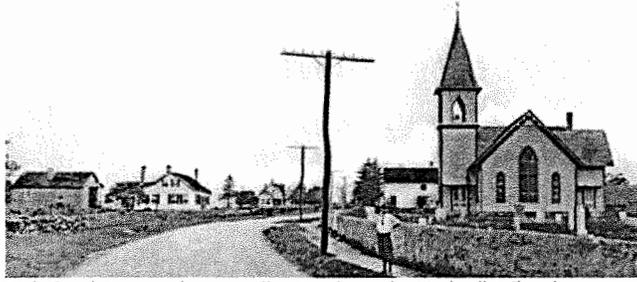
A fee of \$50.00 (check or money order payable to Town of Westport) shall be submitted with an application for Certificate of Appropriateness or Certificate of Hardship. The fee may be waived if hardship is determined. There is no fee for a Certificate of Non-Applicability.

E. THE WHC REVIEW PROCESS

The WHC reviews and evaluates each application on its own merits, and strives to balance traditionally appropriate designs with modern living. However, a proposal to add to or to alter an existing building or structure may be limited or denied in order to preserve for current residents and future generations the historical context and significance of the Point.

Preliminary Review

Applicants are strongly encouraged to request a preliminary review of project plans before submitting an application. Request for a preliminary review should be made to the Chair of the WHC no later than one week before the regular meeting day. No fee is charged for a preliminary review.



Main Road view north, note taller steeple on the Methodist Church

Public Hearing

Like other Town Commissions, the WHC conducts open meetings and holds public hearings. WHC meetings are held the first week of each month in the Westport Town Hall. Upon receipt of a completed application with all required documentation, WHC will schedule a public hearing at the next available regular or special meeting, but in all cases, no later than 45 days after receipt of the completed application. WHC posts notices of the hearing and formally notifies the abutters. A copy of the plans submitted with the application will be posted on the WHC's bulletin board, second floor, Town Hall for public viewing prior to the public hearing.

The applicant or his/her representative must attend the public hearing. If neither the applicant nor the representative is in attendance, the WHC will not consider the application. The applicant or the applicant's representative must present the proposed work plan and note all comments and suggestions. Any written messages from people not in attendance regarding the application will be read, and the audience will be invited to comment. WHC members may ask questions and/or suggest design changes which would bring the proposal in line with WHC's criteria.

In most cases, decisions are made at the initial public hearing, but, if the applicant wishes to revise the plans, the hearing may be continued on request of the applicant. If the request for continuation is approved by the WHC, the applicant and WHC shall agree on the time and place when the matter shall be taken up again. No further fees or abutter or legal notices are required.

If the hearing is not continued, the WHC then votes on whether to issue the requested Certificate. Approval requires the votes of at least four of the seven members of the WHC.

If the WHC does not approve an application, the WHC may recommend changes to the applicant's proposal that would make the application acceptable.

Any applicant wishing to contest the decision of the WHC may appeal to the Superior Court of Bristol County within twenty (20) days of the registration of the WHC's decision with the Town Clerk. See MGL 40C:12A.



View north around 2039 Main Road

F. APPROVED CERTIFICATES

If the certificate is approved, the plans will be signed by four WHC members and the Certificate, date stamped by the Town Clerk, issued. The project checklist will be attached to the Certificate.

Once approved by the WHC and signed, one set of drawings is returned to the applicant, one is delivered to the Building Inspector and one set is filed with the application in the WHC's files.

The owner must post a copy of the Certificate at the site.

For each approved Certificate, the WHC shall assign two WHC members to monitor the work in progress throughout the project (Monitors). The applicant must notify the Monitors when work commences, and when any changes to the approved plans are contemplated.

Time Limits

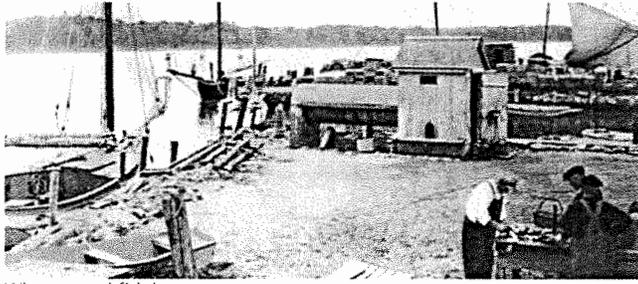
Upon receipt of a Certificate for work that requires a building permit, the applicant must apply for the building permit within twelve (12) months from the date the Certificate is issued or must submit a new application. If a building permit is obtained in that time period, the certificate remains valid for as long as that building permit remains open.

If no building permit is required, the Certificate shall expire 24 months after the issuance of the Certificate or upon the sale or transfer of the property, whichever comes first. Upon request, this expiry date may be extended by the WHC, in its sole determination.

Changes in Approved Plans

Any changes made after the Certificate is issued, however minor, must be approved by the WHC. The applicant should consult first with the Monitors and, if the Monitors determine that the proposed changes require the review of the WHC, present the proposed changes at a WHC meeting. Unapproved work may be subject to penalties and a cease and desist order issued by the Building Inspector, which will remain in effect until approval is obtained, and penalties.

As applicants often must seek approval of their plans from other town bodies such as the Board of Health, the Conservation Commission, or the Planning Board, there is



Wharves and fish houses

the possibility that these authorities may request changes to the plans as approved by the WHC. If changes are required by other town bodies that contradict the approved conditions of the Certificate, the applicant must submit new application for the revised plans to be reviewed by the WHC.

Enforcement

Violations of MGL Chapter 40C may be addressed through the Superior Court and through the District Court as spelled out in the WHC Rules and Regulations Section VII G.

4. CONSIDERATIONS IN DETERMINING APPROPRIATENESS

A. ARCHITECTURAL STYLE

The District includes a variety of architectural styles defined by architectural features—size, shape, roofs, side walls, windows, doors, materials, trim, color—and ornamental details—size and profile of the cornice, vertical treatment of corners of building, arrangement of casings at windows and doors, placement of brackets, dentils, moldings, and decorative shingling.

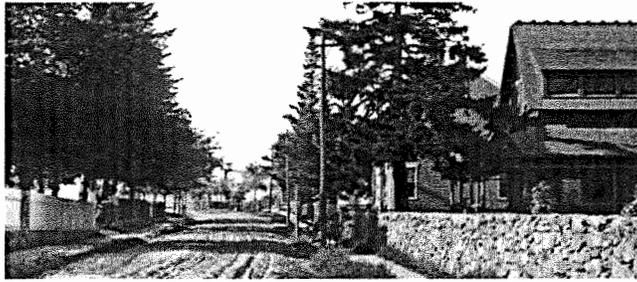
The purpose of the WHC shall be to assure that alterations or additions to a building should be appropriate to the architectural style and materials of the original building and to those of similar buildings in the District. New construction shall be appropriate to the style of existing buildings on the property, and neighboring buildings, blending with abutting properties and the context of the District.

B. SIZE, SCALE, AND MASS

The WHC shall evaluate proposed additions or new construction for appropriateness of size, scale, and mass relative to land area of the proposed project, to the existing building, to adjacent buildings in the area, and to the density of the site or area.

Additions to the existing footprint should be designed so that the existing building is not rendered subordinate to the addition. An addition taller and/or wider than the existing building would be inappropriate. Additions should be differentiated from the existing building (i.e., set back from the existing wall plane) and not obstruct the visual integrity of the original structure.

Alterations and additions should be in harmony with the original building in size and scale. Second stories may be



View north around 2006 Main Road

considered when they are not incongruous to the historic aspects of the house or the surroundings.

C. ORIENTATION

Orientation is a significant organizing principle within the District. Rooflines and long dimensions of primary buildings fall into a pattern as do many extrusions, additions, and secondary buildings. The WHC shall review the orientation of proposed new construction and additions for appropriateness of length and width and orientation to the site and to the existing "grain" or orientation of rooflines of the District.

The WHC has the authority to impose historic setbacks and dimensions more restrictive than those of local zoning.

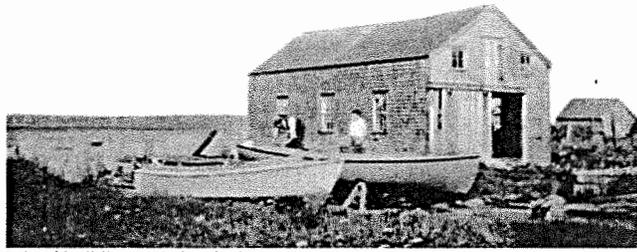
D. MATERIALS

Natural materials such as wood, brick, glass, iron, stone, etc. were traditionally used in the construction of historic buildings and are therefore considered appropriate. Owners are encouraged (but not required) to return features and materials original to the building, even when they may have been previously modified or removed. Synthetic materials such as vinyl, plastic, or aluminum are generally not appropriate. For buildings or additions built after 1973, some synthetic materials may be appropriate if the WHC determines that their placement and appearance replicate natural materials traditionally used for such purposes.

5. ARCHITECTURAL FEATURES AND DETAILS

A. WINDOWS

In an existing building it is preferred that old windows are repaired rather than replaced. Muntin size, wavy glass, and bubble glass contribute to the historic character of a building. Replacement windows in an existing building or new windows in new construction or in additions should be double-hung with true divided lights. Windows should be of a size, proportion, and location that is sympathetic to the architectural style of the building. Window divisions should be consistent with that of the existing building. Material should be painted wood. New and replacement windows visible from a public way should not be vinyl or metal clad. However, metal clad and/or SDL windows may be considered if the difference is not discernable from a public way. Picture windows, in most cases, are not appropriate; the WHC recommends ganged window units in their stead.



Wharf building at Point docks

B. ROOFS

A roof is a prominent feature and key element of a building. A variety of roof types in the District include gable, hipped, mansard, and shed. Proposed additions should match or harmonize with roof style and details of the existing building.

The roof pitch of additions should complement the pitch of the existing building. Roofs of ells or additions should successively step down from the main structure's roofline. Roof pitch for new construction should complement the architectural style of adjacent buildings.

Appropriate roofing materials are wood shingles or asphalt shingles of a dark, neutral color such as gray and of standard textures. Variegated shingles are discouraged.

C. SKYLIGHTS

Skylights should be of a traditional, flat type and minimized in number and size. No skylight may be installed in a roof of a primary façade.

D. SOLAR PANELS

Solar panels visible from a public way are subject to review by the WHC.

E. DORMERS

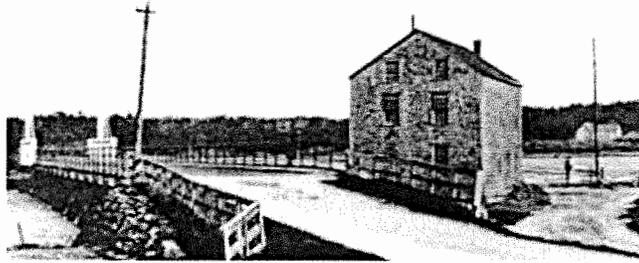
Dormers incorporated into buildings may be considered. Dormers should be of the shed or gable end type. Roof pitch of the dormer must be sympathetic to the style of the existing building and set back substantially from eaves to maintain existing roof lines.

F. CHIMNEYS

The height and original pattern of brickwork in chimneys should be maintained. New or rebuilt chimneys should be detailed out of brick or stone in a manner that is consistent with the architectural style of the building.

G. GUTTERS

Gutters should be of a design and material used on the original building and on similar buildings in the District. Gutter systems of wood, metal or fiberglass that simulates wood, including downspouts should be painted to match the trim. Gutters of wood or copper are preferred.



Westport Point bridge along with Lees wharf built by Thomas Mayhew c.1830

H. SIDE WALLS AND TRIM

Siding materials should be untreated, stained or painted wooden shingles or clapboards. Artificial siding will not be approved. All trim including decorative details must be appropriate to the period of the house and to the District. Intact existing trim and detailing should not be removed. Corner boards, casings, eave and rake trim details, brackets, etc., must be clearly shown on plans submitted for review.

I. SHUTTERS

Shutters and shutter hardware should be retained and/or replicated exactly-in-kind, and if originally operable, be mounted to remain so. Shutters should be of wood and of appropriate size to fit the opening of the window.

J. EXTERIOR DOORS

Exterior doors should be of wood panel design. Existing doors and door openings, including transoms and sidelights, should be repaired, not replaced. If an existing door cannot be repaired, the replacement door should be of similar design as existing and of wood and, if glazed with muntin bars, have true divided lights. Single pane sliding glass doors are inappropriate. French doors may be allowed.

K. GARAGE, BARN, AND SHED DOORS

Garage, barn, and shed doors should be built of wood, not metal or fiberglass.

L. DECKS, PORCHES, PORTICOS, STEPS, BALCONIES, AND RAILINGS/ BALUSTERS

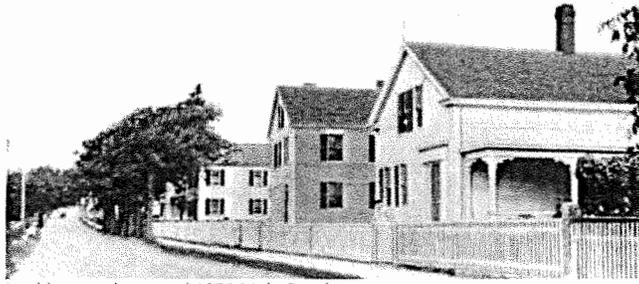
The above should be in keeping with the architectural style of the existing building. Ornamental details should be retained; open porches and porticos should not be enclosed or glazed; sleeping porches should be retained. Steps, stairs, porch and deck material should consist of stone or wood. Pressure-treated lumber is appropriate only as part of a concealed structural framework.

M. PAINT AND STAIN COLORS

Paint and stain colors require approval except on doors and shutters. Exterior trim colors must be clearly indicated on plans.

N. FENCES AND WALLS

Fences have traditionally been a significant element in the Point. They form the boundary line between public and private spaces, and provide a continuous edge between



Looking north around 1958 Main Road

buildings. Colonial and Victorian era fences were often designed to complement the style of the house behind.

Original and early fences and stone walls should be retained and repaired or restored if possible.

For new fences and walls, traditional materials (wood, cast or wrought iron, or dry stone) are appropriate, and should be compatible with the existing building materials, height, proportion, style and historic period. Low brick walls, stockade, vinyl, chain link, and wire fencing are not appropriate.

O. SEPTIC MOUNDS AND RETAINING WALLS

The WHC regards septic mounds as structures, not landscaping. Concrete retaining walls are not appropriate.

P. EXTERIOR LIGHTING

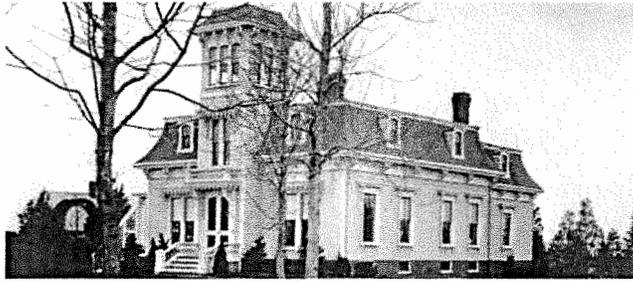
All floodlights, walkway lighting and up-lighting fixtures visible from a public way are subject to review by the WHC. Adherence to the following guidelines, however, for floodlights, walkway lighting and up-lighting precludes the need for individual approval by the WHC:

Timing of exterior floodlights should be limited through motion detectors or timers; lights should be placed low without light spillover on adjoining properties. Low-to-the ground, baffled fixtures are allowed for walkway lighting.

Up-lighting fixtures, such as for facades, signs, fountains, and landscaping are not appropriate.

Q. OTHER

Applicants may have questions about architectural features and details not addressed directly in these Guidelines. Those questions may be brought to the WHC at a regular meeting or during a preliminary review.



Valentine house at 1991 Main Road

ANNEX I DEFINITIONS

District - Westport Point Historic District

WHC - Westport Historical Commission

Certificate - a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship issued by the WHC (see page 5 for certificate descriptions)

Monitors - two WHC members appointed by the WHC to monitor the work in progress under an approved Certificate

Building - a combination of materials forming a shelter for persons, animals, or property

Structure - a combination of materials other than a building, including but not limited to, walls, fences, signs and raised septic mounds, but excluding terraces, walks, driveways and like structures that are substantially at grade

Exterior alteration - any change to the architectural features or details of any building or structure, including but not limited to addition, rebuilding, reconstruction, restoration, demolition, removal, and change of color or material.

Like for like - the replacement of an architectural feature or detail that does not involve a change in design, material, color, or outward appearance, including, but not limited to, certain duplicative projects, such as replacing shingles, repainting with existing colors, and reglazing of sashes

Public way - includes public streets, public walkways, public parks and cemeteries, and public bodies of water. Vegetation, landscaping, fencing, walls, trellises, and the like are not considered to be a barrier to visibility.

Abutters - all persons owning property within 70 feet of all boundaries of an applicant's property, including abutters across streets

True divided lite - windows with multiple panes of glass in each sash, separated by a grid of solid muntins

SDL - simulated divided lite; windows with a grid strips sandwiched between two large panes of glass which are supposed to simulate muntins



Tripp Brothers general store at 1968 Main Road, built c.1879

REFERENCES:

- The Historic Districts Act, Massachusetts General Laws Chapter 40C and 8D
- Westport Historical Commission Bylaw 1973, last amended 2015
- Westport Demolition Bylaw 2002, amended 2007
- Massachusetts Historical Commission *A Guidebook for Historic District Commissions in Massachusetts*
www.state.ma.us/sec/mhc
- MassHistPres Listserve
masshispres-request@cs.umb.edu
- Community Preservation Act
www.communitypreservation.org
- National Register of Historic Places
www.cr.nps.gov/places.htm
- State Ethics Commission
www.mass.gov/ethics/ETHICS.htm



Looking north at foot of Main Road at the Cory store

MAP SHOWING BOUNDARIES
OF THE WESTPORT POINT HISTORIC DISTRICT
ESTABLISHED 1973 / EXPANDED 2007

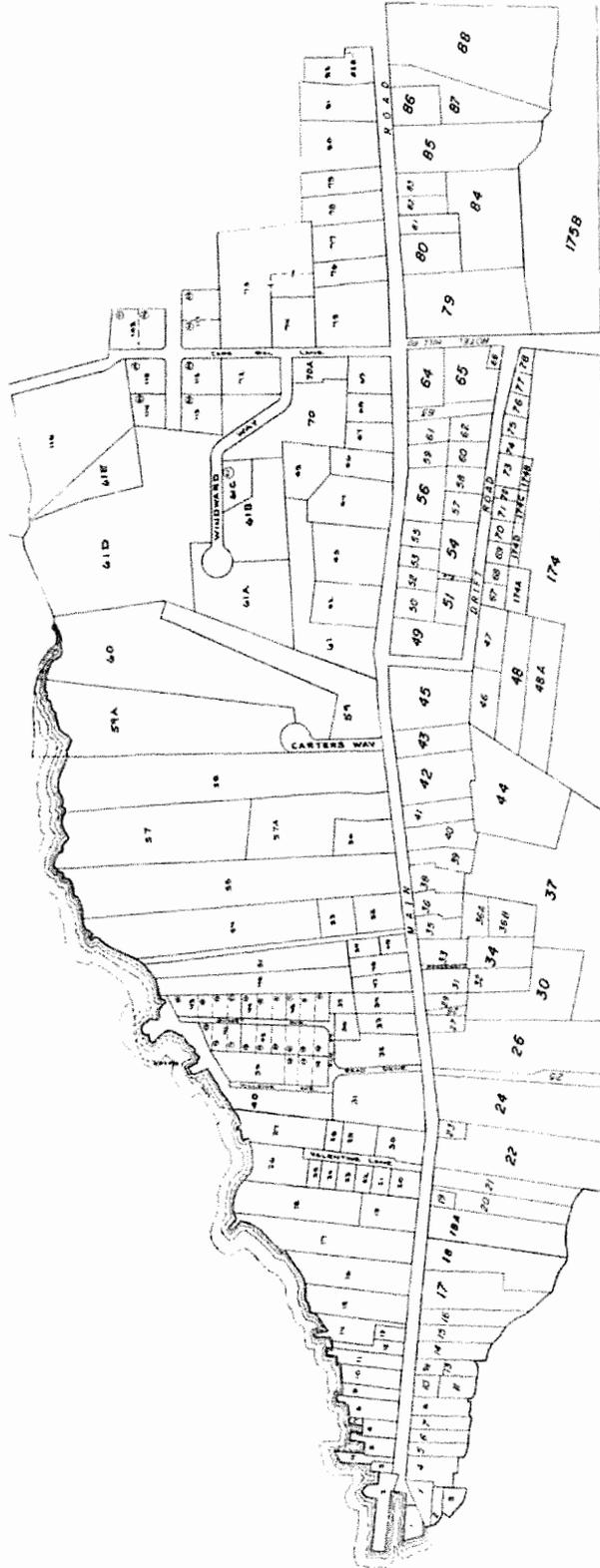


EXHIBIT B



TOWN OF WESTPORT
Application for Construction
Permit

\$269,995.00

REG	<input checked="" type="checkbox"/>	CFY	<input checked="" type="checkbox"/>
RCT	<input checked="" type="checkbox"/>	ACT	14
RCD	<input checked="" type="checkbox"/>	ASR	

PERMIT NO. 23-221

FEE \$ 2700.00

DATE RCVD 3/28/23
 CHECK # 212
 CASH _____

PLEASE TYPE OR PRINT IN INK

APPLICANT South Shore Gunite Pool PHONE 978.479.2878
 ADDRESS 12 Esquire Rd N. Billerica ma 01862
 OWNER Robert Brancas PHONE _____
 PRESENT ADDRESS 2015 Main Rd Westport Ma 02790
JOB LOCATION _____
 CONTRACTOR SSG Pools C.S.# [REDACTED]
 ADDRESS 12 Esquire Rd N. Billerica PHONE 978.479.2878
 ARCH./ENG. Normand C Cote Jr. PHONE _____

TYPE OF USE COMMERCIAL RESIDENTIAL FARM
ZONING DISTRICT - RES. BUS. UNRESTRICTED
TYPE OF WORK **USE OF STRUCTURE**
 A - NEW CONSTRUCTION 1 - STORE 6 - SHED
 B - ADDITION 2 - OFFICE 7 - DECK
 C - ALTERATION 3 - DWELLING 8 - PORCH
 D - DEMOLITION 4 - GARAGE 9 - POOL
 E - RENOVATION 5 - BARN 10 - SIGN
 F - REPAIR 11 - USE OF PREMISES
 G - OTHER EXPLAIN 17 ground Gunite Pool and spa

*PER DEP FORM BWP AQ06 IN ACCORDANCE WITH 310CMR 7.09 MASS DEP

BUILDING SITE DETAILS S.D. LOT # 24-25 MAP # 83 ASSR. LOT # _____
 NEW LOTS - REGISTRY OF DEEDS BOOK _____ PAGE _____ DATE _____
 FRONTAGE _____ FT. LOT AREA _____ SQ. FT. UPLAND _____ SQ. FT.
 FLOOD PLAIN - YES NO BUFFER ZONE - YES NO
 WATERFRONT - YES NO WETLANDS - YES NO
DISTANCE OF PROPOSED STRUCTURE FROM LOT LINES
 STREET LINES 100 FT. LEFT SIDE 30' FT.
 RIGHT SIDE 27' & 31' FT. REAR 25' FT.
 AREA OF EXISTING BUILDINGS ON LOT _____ SQ. FT.

SIZE OF STRUCTURE

FIRST LEVEL	FT. x	FT. = AREA	SQ. FT.
SECOND LEVEL	FT. x	FT. = AREA	SQ. FT.
THIRD LEVEL	FT. x	FT. = AREA	SQ. FT.
ELLS	FT. x	FT. = AREA	SQ. FT.
GARAGE	FT. x	FT. = AREA	SQ. FT.
PORCH	FT. x	FT. = AREA	SQ. FT.
DECKS	FT. x	FT. = AREA	SQ. FT.
SHEDS	FT. x	FT. = AREA	SQ. FT.
SIGNS	FT. x	FT. = AREA	SQ. FT.
POOLS - Size & Type	20x40 concrete 8x12 spa	FT. = AREA	96
TOTAL AREA		896	SQ. FT.

FOOTINGS

CONTINUOUS TYPE - SIZE _____ DEPTH _____ MATERIAL _____
 PIER TYPE - SIZE _____ DEPTH _____ MATERIAL _____

FOUNDATION

MATERIAL _____ THICKNESS _____ HEIGHT _____
 DEPTH BELOW GRADE _____ HEIGHT ABOVE GRADE _____
 SEAL COATING - YES NO TYPE _____

FRAMING

GIRDER - WOOD STEEL SIZE _____ MAX SPAN _____ FT.
 LALLY'S SIZE & TYPE _____ SIZE OF SILL PLATES _____
 FLOOR JOISTS:-
 1ST FL. SIZE _____ DISTANCE O/C _____ SPAN _____
 2ND FL. SIZE _____ DISTANCE O/C _____ SPAN _____
 3RD FL. SIZE _____ DISTANCE O/C _____ SPAN _____
 CEILING JOISTS SIZE _____ DISTANCE O/C _____ SPAN _____
 OUTSIDE WALL STUDS SIZE _____ DISTANCE O/C _____ HEIGHT _____
 BEARING WALL STUDS SIZE _____ DISTANCE O/C _____ HEIGHT _____
 HEADER SIZES _____ SPANS _____
 BEAMS - TYPE _____ SIZE _____ SPAN _____
 ROOF TYPE - 'A' HIP SHED ROOF PITCH _____
 ROOF RAFTERS SIZE _____ DISTANCE O/C _____ SPAN _____

SHEATHING

FLOORS - TYPE & SIZE _____
 WALLS - TYPE & SIZE _____
 ROOFS - TYPE & SIZE _____
 BLOCKING/FIRE STOP (Describe) _____
 INSULATION - FLOORS R- _____ WALLS R- _____ CEILINGS R- _____
 FIRE CODING - TYPE _____ LOCATION _____

PLEASE READ BEFORE SIGNING

I CERTIFY THAT I HAVE READ THIS APPLICATION AND STATE THAT THE INFORMATION CONTAINED HERIN IS CORRECT.

I AGREE TO COMPLY WITH ALL TOWN AND STATE LAWS AND ORDINANCES RELATING TO BUILDING CONSTRUCTION.

WORK MUST BEGIN WITHIN SIX MONTHS AND BE COMPLETED WITHIN TWO YEARS OF PERMIT DATE, OTHERWISE PERMIT WILL EXPIRE. EXTENSIONS MAY BE GRANTED UNDER CERTAIN CONDITIONS WHEN PROPERLY REQUESTED.

SIGNATURE OF APPLICANT R. Varela DATE 3.13.23

*** SEPARATE FORM REQUIRED FOR HOMEOWNER'S EXCEPTION**

owner authorization to be completed when owner's agent or contractor applies for building permit.

I, AS OWNER OF THE SUBJECT PROPERTY, HEREBY AUTHORIZE Raymond Varela TO ACT ON MY BEHALF, IN ALL MATTERS RELATIVE TO WORK AUTHORIZED BY THIS BUILDING PERMIT APPLICATION.

OWNER'S SIGNATURE R. Varela DATE 3.13.23

Item	
1. Building	255,295
2. Electrical	14,700
3. Plumbing	
4. Mechanical (HVAC)	
5. Mechanical (Fire Suppression)	
6. Total Project Cost	269,995

*3/28/23 Spoke to William Kendall
Historic Commission has no
problem over the \$26 pool or
owner RO*

REMARKS PERTAINING TO CONSTRUCTION _____

REMARKS BY _____

EXHIBIT C



5/14/23
OK per
William Howdell

TOWN OF WESTPORT
Application for Construction
Permit

30,000.00

REG	<input checked="" type="checkbox"/>	CPY	<input checked="" type="checkbox"/>
RCT	<input checked="" type="checkbox"/>	ACT	<input checked="" type="checkbox"/>
RCD	<input checked="" type="checkbox"/>	ASR	<input checked="" type="checkbox"/>

DATE RCVD 5/5/23
CHECK # 177
CASH _____

PERMIT NO. 23-371

FEE \$ 300.00

PLEASE TYPE OR PRINT IN INK

APPLICANT Rob Brenea PHONE 508-735-5805
 ADDRESS 2015 Main Rd Westport MA
 OWNER Rob Brenea PHONE 508-735-5805
 PRESENT ADDRESS 12 Coachman Ridge Shrewsbury MA
 JOB LOCATION 2015 Main St
 CONTRACTOR Worcester Building Systems
 ADDRESS 72 Shrewsbury St Worcester, MA PHONE 774-696-2226
 ARCH/ENG. Land Planning Inc. PHONE 508-966-4150

TYPE OF USE COMMERCIAL RESIDENTIAL FARM
 ZONING DISTRICT - RES. BUS. UNRESTRICTED
TYPE OF WORK **USE OF STRUCTURE**
 A - NEW CONSTRUCTION 1 - STORE 6 - SHED
 B - ADDITION 2 - OFFICE 7 - DECK
 C - ALTERATION 3 - DWELLING 8 - PORCH
 D - DEMOLITION* 4 - GARAGE 9 - POOL
 E - RENOVATION 5 - BARN 10 - SIGN
 F - REPAIR 11 - USE OF PREMISES
 G - OTHER EXPLAIN Retaining wall

*PER DEP FORM BWP AQ06 IN ACCORDANCE WITH 810CMR 7.09 MASS DEP

BUILDING SITE DETAILS S.D. LOT # _____ MAP # _____ ASSR. LOT # _____
 NEW LOTS - REGISTRY OF DEEDS BOOK _____ PAGE _____ DATE _____
 FRONTAGE _____ FT. LOT AREA _____ SQ. FT. UPLAND _____ SQ. FT.
 FLOOD PLAIN - YES NO BUFFER ZONE - YES NO
 WATERFRONT - YES NO WETLANDS - YES NO
DISTANCE OF PROPOSED STRUCTURE FROM LOT LINES
 X STREET LINES _____ FT. LEFT SIDE _____ FT.
 X RIGHT SIDE _____ FT. REAR _____ FT.
 AREA OF EXISTING BUILDINGS ON LOT _____ SQ. FT.

SIZE OF STRUCTURE

FIRST LEVEL _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
SECOND LEVEL _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
THIRD LEVEL _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
ELLS _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
GARAGE _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
PORCH _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
DECKS _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
SHEDS _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
SIGNS _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
POOLS - Size & Type _____	FT. x _____	FT. = AREA _____	SQ. FT. _____
TOTAL AREA			SQ. FT. _____

FOOTINGS

CONTINUOUS TYPE - SIZE _____ DEPTH _____ MATERIAL _____
PIER TYPE - SIZE _____ DEPTH _____ MATERIAL _____

FOUNDATION

MATERIAL _____ THICKNESS _____ HEIGHT _____
DEPTH BELOW GRADE _____ HEIGHT ABOVE GRADE _____
SEAL COATING - YES NO TYPE _____

FRAMING

GIRDER - WOOD STEEL SIZE _____ MAX SPAN _____ FT.
LALLYS SIZE & TYPE _____ SIZE OF SILL PLATES _____
FLOOR JOISTS:
1ST FL. SIZE _____ DISTANCE O/C _____ SPAN _____
2ND FL. SIZE _____ DISTANCE O/C _____ SPAN _____
3RD FL. SIZE _____ DISTANCE O/C _____ SPAN _____
CEILING JOISTS SIZE _____ DISTANCE O/C _____ SPAN _____
OUTSIDE WALL STUDS SIZE _____ DISTANCE O/C _____ HEIGHT _____
BEARING WALL STUDS SIZE _____ DISTANCE O/C _____ HEIGHT _____
HEADER SIZES _____ SPANS _____
BEAMS - TYPE _____ SIZE _____ SPAN _____
ROOF TYPE - 'A' HIP SHED ROOF PITCH _____
ROOF RAFTERS SIZE _____ DISTANCE O/C _____ SPAN _____

SHEATHING

FLOORS - TYPE & SIZE _____
WALLS - TYPE & SIZE _____
ROOFS - TYPE & SIZE _____
BLOCKING/FIRE STOP (Describe) _____
INSULATION - FLOORS R- _____ WALLS R- _____ CEILINGS R- _____
FIRE CODING - TYPE _____ LOCATION _____

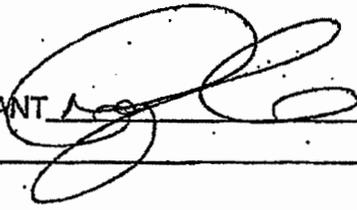
PLEASE READ BEFORE SIGNING

I CERTIFY THAT I HAVE READ THIS APPLICATION AND STATE THAT THE INFORMATION CONTAINED HERIN IS CORRECT.

I AGREE TO COMPLY WITH ALL TOWN AND STATE LAWS AND ORDINANCES RELATING TO BUILDING CONSTRUCTION.

WORK MUST BEGIN WITHIN SIX MONTHS AND BE COMPLETED WITHIN TWO YEARS OF PERMIT DATE, OTHERWISE PERMIT WILL EXPIRE. EXTENSIONS MAY BE GRANTED UNDER CERTAIN CONDITIONS WHEN PROPERLY REQUESTED.

SIGNATURE OF APPLICANT



DATE 5/5/23

*** SEPARATE FORM REQUIRED FOR HOMEOWNER'S EXCEPTION**

owner authorization to be completed when
owner's agent or contractor applies for building permit.

I, AS OWNER OF THE SUBJECT PROPERTY, HEREBY AUTHORIZE
TO ACT ON MY BEHALF, IN ALL MATTERS RELATIVE TO WORK AUTHORIZED BY THIS BUILDING PERMIT APPLICATION.

OWNER'S SIGNATURE _____

DATE _____

Item	
1. Building	
2. Electrical	
3. Plumbing	
4. Mechanical (HVAC)	
5. Mechanical (Fire Suppression)	
6. Total Project Cost	<u>30,000</u>

REMARKS PERTAINING TO CONSTRUCTION construct Retaining Wall For Pool install

REMARKS BY _____

THIS PAGE FOR OFFICE USE ONLY

ROUTING FOR OTHER JURISDICTION APPROVALS WHEN REQUIRED.			
PLEASE FORWARD TO NEXT DEPARTMENT CHECKED			
CHECK	DEPARTMENT	BY	DATE
	BOARD OF HEALTH		
✓	CONSERVATION	<i>Christof Payne</i>	5/5/23
	BOARD OF APPEALS		
	PLANNING		
✓	BUILDING DEPT.	<i>Ralph L. Boye</i>	5/16/23

5/16/23 Called con permit party/costs 100

VALIDATION

TAX STATUS - CURRENT DELINQUENT

PERMIT NO. 23-371 FEE \$ 300⁰⁰

DATE ISSUED May 16, 23 CONST. VALUE \$ 30,000

TO Robert Bianca

ADDRESS 2015 Main Road

S.D. LOT # _____ ASSR. LOT # _____ MAP # _____

BY Ralph L. Boye
Building Inspector

WORK CONTENT

Construct a engineered retaining wall per the approved plans dated 4/25/23

FILE NO.

23-371

PERMIT NO. 23-371

FEE \$300⁰⁰

"Persons contracting with unregistered contractors DO NOT HAVE ACCESS TO THE GUARANTY FUND (as set forth in MGL c. 142A)"

TOWN OF WESTPORT
BUILDING DEPARTMENT
856 MAIN ROAD, WESTPORT, MA 02790



BUILDING PERMIT

THIS CERTIFIES THAT Robert Brusca May 16 2023
has permission to Construct a engineered retaining wall per the approved plans dated 4/25/23
at 2515 Main Road

PROVIDING THAT THE PERSON ACCEPTING THIS PERMIT SHALL IN EVERY RESPECT CONFORM TO THE TERMS OF THE APPLICATION ON FILE IN THIS OFFICE AND TO THE PROVISIONS OF THE STATUTES AND BY-LAWS RELATING TO THE CONSTRUCTION OF BUILDINGS IN THE TOWN OF WESTPORT AND STATE OF MASSACHUSETTS. ANY VIOLATIONS OF ANY OF THE TERMS ABOVE NOTED SHALL WORK AN IMMEDIATE REVOCATION OF THIS PERMIT.

Ralph N. Anz INSPECTOR OF BUILDINGS

- **SEPARATE PERMIT** REQUIRED FOR **WOODSTOVES AND FIREPLACES.**
- **THIS CARD MUST BE DISPLAYED IN A CONSPICUOUS PLACE ON THE PREMISES AND NOT TORN DOWN OR REMOVED.**

EXHIBIT D

Transcription of Westport Historical Commission Meeting – December 4, 2023

At 32:25

Rud Lawrence: The next item on the agenda is 2015 Main Road. The facts as I understand them are that in the spring of 2023, two different building permit applications were submitted to the building inspector. One for an in-ground pool and the one for roughly 56 x 91 foot engineered concrete structure to be approximately 9 feet above grade which would house the pool and mechanical room among other things. Although the property had not sought a certificate of non-applicability, hardship or appropriateness from the Commission, the permits were issued and construction apparently began over the summer. The engineered concrete structure is visible from at least one public way. On November 16, 2023, under my authority to correspond to the public under Section 2(b)2 of our rules and regulations, I sent the record owner of the property a notice of violation and an order to respond under Section 7(a)2 of our rules and regulations. The building inspector subsequently issued a written stop work order. On November 20, 2023, that is within the one week period under the notice and order, Counsel for the individual now claiming to be the Trustee of the owner sent me a letter regarding the current construction. I believe there was a second letter that was sent in response since then, which brings us up to tonight's meeting.

Someone just dropped this off. Counsel for 2015. Do you want to present anything at this time?

RBF stood up – could not hear what RBF said.

Rud Lawrence: counsel for the neighbors? I am sorry Bob, I didn't recognize you in a suit! Okay is there anyone here appearing for 2015?

ATTY: First on a housekeeping matter, I just want to inform you that we will be recording the proceeding this evening.

Rud Lawrence: That's fine. It is already being recorded, as you know. And it is available for public viewing by anyone.

ATTY: Understood. We would like to do our own recording.

Rud Lawrence: That's fine.

ATTY: Good evening. My name is Jordan Price I am an attorney at Hinckley Allen and Snyder, 28 State Street in Boston. I am here tonight representing Robert Branca, the Trustee of the ANC Realty Trust. He is the owner of the property. I know there has been some confusion.

Rud Lawrence: He hasn't notified the Town of that yet.

ATTY: He has notified the Town of that. I think the Town is behind in its housekeeping matters. We are here tonight with a full reservation of all rights. I have submitted two letters now to the Historic Commission. We are here in good faith. We believe the Commission has no jurisdiction over this matter. _____ We are hoping we can reach a resolution of what is happening here. There appears to be some confusion about the project at issue. 2015 Main Road is of course located in the Historic District. It is waterfront property, a single family home built in the early 1970s. The project entails the construction of an engineered retaining wall pursuant to plans prepared by Land Planning dated April 25, 2023. There were retaining walls on the property previously that were actually higher than these

retaining walls and they were failing. I just wanted to make note of that. In addition to the construction of the retaining wall layout, Mr. Branca also received a separate permit to construct an underground pool on the property. The poured concrete walls will be covered with field stone to make the walls compatible with existing stone walls surrounding the property. On May 16, 2023, last May, Mr. Branca received a building permit from the building commissioner for the retaining wall work. His permit application had been accompanied by detailed plans for the project which showed the exact proposed dimensions for the retaining wall layout. There were several pages of plans – very detailed. The building commissioner approved those specific plans. Again, those plans depicted the retaining wall layout, including the location of a proposed pool equipment vault. In advance, this is incredible – in advance of the issuance of that building permit, in accordance with what I understand to be Town procedure, is my understanding that Building Commissioner Souza, with those detailed plans in hand, confirmed with the Historic Commission regarding the project and inquired whether a certificate would be required through the Commission.

Rud Lawrence: Let me stop you there. That is absolutely incorrect. Just so you know.

William Kendall: He did make a phone call to me and asked...

Rud Lawrence: He is not the Commission.

William Kendall: He did make a phone call to me with just a question. The question was whether a swimming pool would require review by the Commission.

Rud Lawrence: An at grade swimming pool not visible from a public way.

William Kendall: In our bylaw, a swimming pool, if it is at grade, and I said is this at grade or is it an above ground swimming pool? We have reviewed over anything that is being constructed that is above grade. We consider that a structure. Okay. This is the phone call now. So, yes he did ask and I said it would be if it was at grade. Also, I said they would require to have a certificate of non-applicability if that is the case to prove that this was the case as we always do. Our procedure is any time something is – anytime construction is done within the District must be applied for whether it is in view even from the public – from the ways – which is the river and Main Road. So, if it is not in view, it still has to come before the Commission. But we have expedited that so they would not have to come before a public hearing and they fill out an application and check off non-applicability. Then it is the responsibility of the applicant to present plans along with that application to the Clerk. The Clerk then reviews those plans and can make a determination whether it is truly non-applicable. That's the procedure. That was not followed.

ATTY: Okay, with all due respect, I wasn't there when the procedure and the permits were granted. It was our understanding and the homeowner's understanding that the Historic Commission had in fact told Building Commissioner that a certificate was not required and what happened at that point

William Kendall: This isn't true, because I was the one.

ATTY: And what I am saying was what our understanding was. So our understanding was that a certificate was not required. We had approved plans. We were given building permits – two separate building permits. One for this retaining wall system and the other for a pool. This was back in May. My client has since spent hundreds of thousands of dollars moving forward with this project and here we

are in December with what the Commission has issued a Notice of Violation and the Building Commissioner has purported to issue a stop work order. My client has proceeded in what we understood to be the practice of the Historic Commission in conjunction with the building commissioner in terms of issuing approvals for these projects. His construction started back in September, and we didn't receive any kind of word or correspondence until November which I don't think was not a coincidence was when neighbors started harassing my client, going onto his property, trying to stop construction work that was going on there. I have taken a look at both the General Laws that cover the Historic Commission as well as this Commission's bylaws and it is very clear to me that under the bylaws walls fall outside the Commission's jurisdiction.

Rud Lawrence: Let me clarify that then. A building consists of walls, but buildings and structures fall under our jurisdiction and this is undeniably a structure. It includes a mechanical room. We call raised septic mounds a structure and this one is some 100 times bigger than a raised septic mound.

ATTY: With all due respect, I would take the position that these are walls. There is a pool vault that is clearly depicted on the plans the building commissioner approved that does not need to be there. It is just housing the pool equipment. It can be out in the air. We don't need anything housing that in. These are walls which fall outside your jurisdiction.

William Kendall: Excuse me. That was a change in grade. You've changed the grade. Right. If you are talking about walls.

Owner: If I could clarify. It is technically a two-family home. There are multiple grades. The patio construction where the walls come up is lower than the retaining walls that were replaced. That was in grade with the first one. The second unit beneath which is not used as a separate family but it is legally a two-family house with separate codes.

Rud Lawrence: But what you have done is taken an area of approximately of 90 x 60 or whatever and raised it 9 feet and it comes and feathers out up to the house.

Owner: Again, there were existing retaining walls which were higher than the ones that are there now. They were covered by shrubbery. They were plain concrete retaining walls. They were there. They were failing. They were supporting earth which I removed and then replaced. So what was there, it was already there. The only wall that was not there is the one that is perpendicular to the shoreline.

William Kendall: Mr. Branca, when you do apply to the Historical Commission for your certificate, you will present those photographs then and they would appear on your application with the building inspector right, your landscape designer will have before existing what the elevations are with the grade lines to show us exactly what was there when you started construction and then we would like the other drawing to show what is being proposed which would have the elevation grade lines so we can verify that.

Owner: Well, those walls are gone.

William Kendall: What are the plans?

Rud Lawrence: You have the photographs from when you bought the house, the listing photographs, and they are very clear that this is a huge elevation in grade for much of that property.

Owner: I disagree. Compared to what was there before, it is not that significantly different.

Beverly Schuch: You're saying these walls were here before and you just replaced them?

Owner: The wall you just pointed to was the wall that was not there before.

Beverly Schuch: That is a big wall. What is that 9 feet?

Owner: Again,

Caroline Bolter: Pretty visible.

William Kendall: Can we have drawings of what this – the drawing from the landscape architect. Maybe that is premature. That's premature. We are just discussing whether....

Rud Lawrence: What's the next step?

William Kendall: But you do have that?

Owner: Yes.

William Kendall: The plans that the building inspector approved.

Owner: The plans the building inspector approved were sent to the Commission. This is the third time I've done this.

William Kendall: It has been presented? To who?

Owner: To you through the building inspector.

William Kendall/Beverly Schuch: No.

Rud Lawrence: No. Never. Never. Never presented. Nothing. It is my understanding that the phone call was made with your first application which was only basically a site plan saying a pool and saying a retaining wall without any elevations so that when he called Mr. Kendall he didn't even realize the elevations were going to be 9 feet high.

Owner: The plans were complete..... everything they had.

Rud Lawrence: I thought there were two sets of plans here, isn't that true.

Owner: One set of plans for both permits.

Rud Lawrence: Well the first permit apparently didn't have a complete set of plans with it.

Owner: Yes it did.

Rud Lawrence: Oh it did?

Owner: It is the same set of plans.

Rud Lawrence: I guess we are both being misinformed by the building inspector.

Owner: I wouldn't say he has misinformed anybody. Again, I have been through this process at 2023 Main Road.....I obtained a certificate because I was told after I filed for a building permit that I needed

to apply for one. And on this house, the same thing happened, and I did the same exact thing so I feel I have complied with everything and I watched your hearing last month three separate times to explain the process and it is exactly the process I went through. I thought I was following the rules. I am not trying to skirt or avoid anything.

Rud Lawrence: What happened after the stop order was issued? I understand you continued to work.

Owner: The day I got it, somebody came to the door. That was the last day of work. They had to close up the property and move all the equipment off site that day and someone came onto the property and said they were going to arrest anyone associated with the project. That's kidnapping. There was no law enforcement officer and there was no crime.

Beverly Schuch: Who said that? Who said that?

Owner: Do I need to get affidavits. I didn't want to get this far right? I followed the rules.

Rud Lawrence: Okay, enough, enough with this part of it. Is that the end of your presentation or is there more?

Atty: I wanted to just address one point in connection with this stop work order. There is a separate permit for a pool. There has never been a stop work order issued in connection with the pool permit. That was the subject I sent the Commission a letter on Friday, December 1st, explaining that situation. What happened at that point, the pool is a separate permit. A constable comes out and starts threatening to arrest the pool contractors who are working under a permit on private property and there was never any type of stop work order in connection with the pool permit. But in any event, we are here tonight, my client is acting in complete and utmost good faith understanding that he was following the procedure that the Town has for moving forward with his project. He was issued two building permits. He understood for better or for worse that the Commission had signed off on the work and had determined that no certificate was required, and he has spent hundreds of thousands of dollars on a project and has a site that is very unsafe. He wants to be able to figure out a path forward so he can complete this project on his property which is going to be absolutely beautiful and is going to comport with the historic character with the type of fieldstones that he is going to make sure that that wall, and we are strongly in our conviction that this is a wall that is not subject to the Commission's jurisdiction. So we would request that the Commission issue a Certificate of Non-applicability to comport with what we understand was issued to the building inspector/commissioner back in May.

Rud Lawrence: Thank you.

Atty: Thank you.

Rud Lawrence: Robert Feingold. I believe you are appearing on behalf of some interested parties. Tell us whatever you have to tell us. Say whatever you have to say.

RBF: Good evening everybody. I am here for the neighbors - John Moriarty, Pamela Tripp, Betty Slade, and Sally Harty.

Someone: Could you speak into the microphone?

RBF: Can everybody hear me?

Rud Lawrence: Speak up and point it directly at your mouth.

I am not going to speak right now about all the violations of the procedures that committed here. I would like to point out #1 that my clients have not trespassed and #2 they only became aware of this when they started building the wall, which was early November. It takes time to consider what we can do about something like that. It is very clear that the applicant or the non-applicant knows the process because he has been before the WHC in the proper way for other projects he has done. There is no question that when you do something in a Historic District you are supposed to get one of three permits, and he didn't apply at all.

Rud Lawrence: Not a permit – it is a certificate.

RBF: He didn't. The idea that the pool at grade is almost comical. You have seen the photograph it is 9 feet above grade. The idea that it is a wall and not a structure is belied by the fact that there is a room in the wall. There is an equipment room with a window and a door.

Rud Lawrence: It is my understanding that the plans even describe it as a structure.

RBF: There is no question in our mind that the appropriate thing to do now is to continue to stop work, do what you are supposed to do, apply for a certificate and we'll talk about the merits at that time. Thank you.

Rud Lawrence: Thank you. Do I hear any other public comments or questions?

Person off camera (possible Town Counsel) Before you proceed with discussions among the Commission, the Commission should still take procedural step of voting to ratify your issuance of the Notice.

Rud Lawrence: Absolutely. Do I hear a motion?

William Kendall: To what?

Rud Lawrence: To ratify the stop order that has been issued.

Town Counsel: No not the stop order, the Notice of Violation.

Rud Lawrence: The Notice of Violation that has been issued. Thank you.

William Kendall: I so move.

Caroline Bolter: I second.

Rud Lawrence: Let's do a roll call.

The WHC voted to ratify the issuance of the notice of violation. Unanimous – 7 votes

Rud Lawrence: Thank you. Any other procedural steps I should follow before I ask for public comments.

Town Counsel: This is not a public hearing and are not required to take public comment. You can discuss amongst yourselves as the Commission in public meeting whether or how to proceed including whether to vote that the steps that applicant has submitted to you as the remediation plan are sufficient or insufficient. If you determine that they are not sufficient, Commission has option to make a

motion to proceed with enforcement which under your rules and regulations would require you to go before Board of Selectmen to ask for authorization to engage town counsel to proceed with a Superior Court Action.

Rud Lawrence: Okay – we shall proceed with discussion.

Town Counsel: Another option would be to continue things to allow the owner to submit an application for one of the three certificates that are contemplated.

Rud Lawrence: Very good. Discussion?

Garrett Stuck: I had a question for the owner – So I saw a couple of sets of plans – one of them I think was for the permit issued March 28 – is that correct? – is that when the first permit was issued?

Owner: I believe it was.

Garrett Stuck: What I saw maybe it wasn't a complete set but there were no elevations on that drawing – maybe there was one elevation of a disembodied pool.

Owner: I have the plans here.

Garrett Stuck: Would you show what...

William Kendall: I don't think he should be giving us plans now.

Rud Lawrence: Well it has to do with whether what he was doing he had cleans hands or not.

Owner: Yes the plans were approved.

Owner got out plans submitted for his building permit to show to WHC.

Owner: These are the plan showing walls, elevations, all the dimensions, materials, subgrades – everything that's there.

Rud Lawrence: By the way, you don't need to go through me but thank you – I understand

Garrett Stuck: Was there a prior permit – this was issued May 16th? Was there a prior permit? When was the first permit issued?

Owner: This is the one I authorized that the construction is proceeding according to this plan.

Rud Lawrence: My understanding that the initial plan for the pool, just the pool, but maybe I am wrong.

Owner: No. Everything is contained in this plan.

Rud Lawrence: Everything subsequent. If we could get the stamped original plan that would assure us of that that is what was there originally.

Owner: I will request it from the building department.

Rud Lawrence: I appreciate that thank you.

Garrett Stuck: Is it correct that there were two permits issued?

Owner: There were two permits issued.

Garrett Stuck: The plans that were submitted for the first permit were exactly the same ones that were submitted for the second permit?

Owner: I will have to check with my contractors but I have only been working I've done bids through this set of plans. The reason that there were two permit applications - there were two separate contractors – Everyone was fully insured and everyone is fully licensed. Their internal procedures and their insurance required them to get the permits in the way they did, to my understanding.

Rud Lawrence: Our understanding is that this original one was just the pool contractor and did not include all of that detail.

Garrett Stuck: Did not include elevations.

Rud Lawrence: Did not include elevations.

Owner: Everything has been submitted to the Town since last spring, to my understanding. Well I know it – they are stamped last spring, months before I began the project. And I do feel obligated to note that I have done things that the permit did not require – silt fencing, stake details, well outside the buffer zone, it is the right thing to do because of where the project is -- where we want to live -- it was the right thing to do. So we did. We've spent much more money than we would have been required to do to meet building codes and other codes. The equipment vault was to keep the equipment out of sight of my neighbors I don't have to do that. I can fill it with dirt and put bushes around it. I don't want to do that. We were willing to do that so it was not visible. We are selecting field stones and broken ledge that are characteristic of walls throughout the region. Again, select process. I am not getting pellets of stone that I can buy from any yard. We are spending extra money to use stones that are used throughout the region. This is not a situation of where my family tried to skirt anything. It is obvious. How can I hide this? It is insane to think that I am trying to do something without your approval. Again I owned that house that was just up there before and we got a certificate of appropriateness from you after I filed for a building permit and was told I needed to apply and I did. Again, I am an attorney and a real estate developer. I have gotten lots of zoning and planning board and other relief from other parts of the country, including this state and typically have not been denied a permit before this year. I was not denied a permit because I was told I did not need a certificate.

Again I am aware of the process. I watched your hearing because I am concerned with you changing your guidelines, updating or modernizing them. I watched and heard at least three separate descriptions of the process that I just went through – it was exactly what I went through. I can quote "Ralph does a great job. He is very thorough. The Clerk just a very great job." Before, I believe it was you Mr. Kendall—

William Kendall: Of course.

Owner: Before you got here - everyone has to come to the commission first before applying for a building permit. And then now that's not what we do. You got hundreds of phone calls.

William Kendall – That's not true at all.

Owner: It's on record. I am only telling you

William Kendall – Wait a minute – just repeat that again. I am confused.

Owner: Sure. You said before you were on the Commission, applicants were required to appear before the Commission on everything. Now you use the Town employees as a screening process, who do an excellent job and are very thorough.

William Kendall: No, no.

Rud Lawrence: Not the Town employees.

William Kendall: As I said before...

Owner: I will play it.

William Kendall: No. As I said, I can quote myself. I said Ralph Souza, the building inspector, does an excellent job in looking over the work that has been done in the Historic District. The procedure that we have now is that everything that is done in the District, any construction that is done in the District, is applied for and

Rud Lawrence: Through some certificate

William Kendall: If the applicant feels it is non-applicable, he checks off non-applicability. Now, anyone that did anything in the District prior to a few years ago had to have a public hearing. We have been trying to avoid people having to come for these public hearings if they have to replace the clapboard on the back of their house or some shingles

Rud Lawrence: It is exactly the same thing.

William Kendall: Because they are like for to repair shingles or fascia boards or something like that does not have to come to the Commission now, it did before. So we then have expedited this by having it applied for, the Clerk then is the person who gets that certificate and then looks it over, decides whether it is truly non-applicable. Not it is up to

Rud Lawrence: The Clerk and the Chair.

William Kendall: And the Chair, that is right. And it is up to the applicant to prove that it is not applicable whether it can be seen from the public way. That is one of our big issues. People come in and say it can't be seen from a public way. Well we take a look at it and see a bunch of trees. Trees are not part of our review but trees can be cut down, and if trees are cut down, that's in the public view either from the river or from the road. So that is our procedure. I don't know where you are getting your information.

Owner: Having done it before and in reading the statute. I am an attorney. I read it in good faith. The black letter of the law. _____ had a conversation. We disagreed about what it meant but I believe I was acting in good faith reading this that you didn't have jurisdiction. So when I got my permit approved _____ I didn't need to get a certificate because you didn't have jurisdiction to issue a certificate.

Rud Lawrence: But you do need to get a certificate.

Owner: I disagree.

Rud Lawrence: You disagree (chuckles). Does that mean you are not intending to get a certificate? What does that mean?

Owner: I did not say that. I am here in good faith to explain the process that why we are here and my family is emotionally distraught and my children's financial future is in jeopardy. We went through this process in good faith by the black letter of the law and 7/8 months later after the walls were there for – the forms were there for weeks.

Rud Lawrence: The first I heard about this was November 7th. The first I heard about it. I had no knowledge of this before that of any kind.

Owner: The permits had been issued for a while. I waited until after Labor Day to begin so it has been at least

Rud Lawrence: We don't review every permit that the building inspector issues. Maybe we should but we don't. It is not part of our process.

Owner: _____ guideline review _____ However, like I said we acted in good faith based on the black letter of the law. I am not making it up. I mean how would I hide this project? Why would I hide it?

Beverly Schuch: I have a comment. It's kind of a side issue but not without merit. If you had been _____ considerate of your neighbors as you say with materials and other things, why did they feel they had to hire an attorney to represent them to fight this?

Owner: They can speak for themselves.

Rud Lawrence: Did you speak to them about it and show them the plans ahead of time?

Owner: Some of my neighbors – yes.

Rud Lawrence: Are there any neighbors here, if that's the case? Which neighbors?

Owner: I prefer not to get them involved in this. _____

Caroline Bolter: But wouldn't you think it reasonable. Did you build the house originally?

Owner: This house no. It's not historical.

Caroline Bolter: I know that. You said mid 70s. I had heard.

Owner: 1980.

Caroline Bolter: 1980. Have you done any renovations on the house?

Owner: Yes.

Caroline Bolter: Did you not have to get a permit – did you not have to get a certificate of appropriateness or non-applicability for that work?

Owner: When I replaced the roof, there were three skylights. There was a question as to whether one of them was visible down _____ Lane, so I applied for a building permit and I was told I needed to get a certificate because of that.

Caroline Bolter: And you did?

Owner: But I was told. Again I did the same process as I did now on the same house. I followed that process.

Caroline Bolter: It didn't occur to you as someone who is involved in real estate and also an attorney that if you are building a 9 foot wall which is visible from the water that that wasn't going to be a little more jarring than a skylight which was visible from Valentine Lane? But for visibility from Valentine Lane, you had to get a certificate of appropriateness.

Owner: But I wasn't told I needed to apply for one until after I applied for a building permit, which is my experience in real estate. Again, wall use the word wall.

Caroline Bolter: I don't care what's happening

Owner: It is outside your jurisdiction.

Rud Lawrence: Do you have a copy of our guidelines?

Owner: I do.

Rud Lawrence: Did you have it when you bought your house? Was it given to you at some point? Since you lived there?

Owner: I went through that....

Rud Lawrence: So you have had it for a while. Did you look at it?

Owner: Yes.

Rud Lawrence: Because you say the letter of the law but it is very clear in our guidelines that you didn't follow them.

Owner: The enabling legislation, state and the town level, which you discussed at your last hearing, specifically, and I know you know this because you said it, [not clear: frustrating – interpretations of the laws on November 6th]

Rud Lawrence: Yeah but we do over structures

William Kendall: And grade changes

Rud Lawrence: And grade changes

William Kendall: Mr. Branca, will you be applying for a certificate of non-applicability?

Owner: I am going to speak to your counsel and will make a decision.

Rud Lawrence: So you are not committing to anything at this point.

Owner: I believe the stakes are so high and I have counsel here and he can confer with my counsel. I am not going to be making any commitments. I think it would be foolish.

Rud Lawrence: Would it be possible for you to confer with your counsel before we leave this evening.

Owner: I would be happy to have an off the record discussion.

Rud Lawrence: And our counsel?

Owner: And your counsel, yes. We had offered that. We would sit down with you and show you everything. We can have a complete discussion.

Rud Lawrence: Hopefully you are not showing them anything you haven't shown us. I think that is what we are trying to do is to get to the bottom of things.

William Kendall: Possibly you could apply for a certificate and by our next meeting, then we would be sending out notices to abutters, we would have an official public hearing and all the plans would be here for us with your designer to answer questions as we do with all of our hearings.

Owner: It is possible.

Caroline Butler: All of your abutters will be notified of that public hearing.

Owner: I have noticed that public notices are spotty.

Caroline Butler: There is quite a substantial presences here at this meeting, so it

Garrett Stack: Can I ask another question? I noticed in your plans that there were several items that were not specified completely? I don't recall the granite façade being specified. You didn't provide a sample.

Owner: I can show it to you.

Garrett Stack: But you haven't?

Owner: No.

Garrett Stack: There is also a stainless steel and glass railing that's planned for the top of that structure?

Owner: There is no decision that has been made on the fence.

Garrett Stack: But it is mentioned that there will be a stainless steel and glass railing.

Owner: The building code requires a fence.

Garrett Stack: It doesn't require a fence. It requires a railing. Were you planning to bring that before us?

Owner: I can.

Garrett Stack: Is there any other aspect of this structure that you are planning to bring before us?

Caroline Bolter: In one of Jordan Pierce's letters, she talks about, and there will be absolutely no jurisdiction over the terrace. Well possibly that railing is part of the terrace. Basically, what I am saying is we would like to know what you aren't telling us.

Owner: I have not....

Rud Lawrence to Caroline Bolter: Good try

Owner: It would be very hard to hide, as I have

Caroline Bolter: We notice that

Owner: For the third time

Caroline Bolter: Everybody here would probably agree with that

Someone in the audience: After the fact, that's true

Owner: After the permit, that's true

Garrett Stuck: Can you tell us roughly when this structure first rose above grade? There was a lot work I am sure...

Owner: September

Garrett Stuck: putting in footings

Owner: September

Garrett Stuck: So the footings were already above grade

Owner: They were and then forms went up, they were up and concrete through the forms for weeks. So I feel it was somewhat intentional and indicative of motive on I don't know whose part but if I have to get me to a point where the maximum financial harm is done. It's indisputable.

Caroline Bolter: Are your neighbors summer folk?

Owner: Shrugs

Town Counsel: If the owner wants have a discussion

Rud Lawrence: Now is the time to do it.

Town Counsel: You can make a motion to recess while that happens

Rud Lawrence: And we will have no discussion in the interim.

Town Counsel: Exactly.

Rud Lawrence: We are in recess and there will be no discussion about this among us.

RBF: May I have an opportunity to speak?

Rud Lawrence: Sure.

RBF: First, I want to give you a copy of the first application in March. Second I want to show you a picture Ralph Souza took that is in the file. This was taken in mid October and it shows a flat swimming pool. Anybody saw it would think it is an inground at grade pool. October 13. People were wondering why the neighbors didn't do anything. Here is the reason. That doesn't look like a 9 foot above grade pool.

Rud Lawrence: and this does confirm what I said earlier that the first set of plans didn't show any elevation.

RBF: Exactly. Ignorance of the law especially on the part of the lawyer is no defense. He knew that he had to come to you for one of the certificates because he applied for one way before this. I am not questioning good faith but there are questions to be made.

Rud Lawrence: Thank you.

Owner: First I would like to respond to that. I believe that is _____ on motive. I am not sure what my motive would be to skirt jurisdiction of something that is obvious to the world. I don't know what you think I would be hiding. I am insulted by it. My children of petrified. There are people coming onto my property, screaming at the contractors, people flying drones where my children sleep – cameras – understand where we are. Now I am going to need to reserve my rights and do want to cooperate with the Commission. I have done this before. I appreciate the point. I would like _____. We will come before you. We have an agreement with counsel re reserving our rights. We still assert jurisdiction but will file for a certificate of appropriateness and a certificate of non-applicability. But we will provide you with all the information that you seek. We will meet you on site. We will walk you through everything. No problem with any of that. Again, we thought we were following the rules. The way we had done it before.

Rud Lawrence: And you will stop work.

Owner: It has already stopped.

Rud Lawrence: Okay and it will be continued to stop.

Owner: We need to keep people off the property because it is dangerous. We will need a gate. We will need to put up a construction fence.

Rud Lawrence: Which is temporary right.

Owner: Correct.

Rud Lawrence: To put up a temporary gate probably requires a certificate of non-applicability.

Owner: Safety.

Rud Lawrence: There is an exception for safety. Okay. Discussion?

Caroline Bolter: Only

Town Counsel: If a may before you discuss, the recommendation of Town Counsel that we allow the owner to proceed as he described it to not take any votes as to sufficiency or insufficiency _____ and to not take any vote as to an enforcement action.

Rud Lawrence: Leave things as they stand.

Town Counsel: And allow the owner to submit the application

Rud Lawrence: I appreciate that and thank you.

Caroline Bolter: My question is that the owner said he is going to submit two applications, one for appropriateness and one for non-applicability, which is it? Why both?

Owner: Because I need to preserve my rights. The stakes are too high and I agree with counsel that that is the appropriate way.

Town Counsel: I see no issues under your rules and regulations or Chapter 40 C with an owner seeking either certificate of non-applicability or appropriateness.

Caroline Bolter: The latter will require a public hearing and the abutters will be notified.

Rud Lawrence: And you understand the timeline on that? It has to be delivered 3 weeks before the next meeting. Okay.

Town Counsel: And that should be done and if an order for a certificate of non-applicability be approved that would obviously obviate the need for the certificate of appropriateness

Rud Lawrence: Understood. Any further discussion? It doesn't appear anyone is making a motion to take any further action. I think we are concluded with that discussion. Is that correct? Good.

1:16:44

EXHIBIT E



TOWN OF WESTPORT

856 MAIN ROAD
WESTPORT, MA 02790

BUILDING DEPARTMENT

Tel: (508) 636-1035

November 17, 2023

James Sabra, Trustee of ANC Nominee Realty Trust
c/o Robert Branca
72 Shrewsbury Street, Suite 7
Worcester, MA 01604

Re: Stop Work Order - 2015 Main Road

Dear Mr. Sabra/Mr. Branca,

I have been notified by Rud Lawrence, Chair of the Westport Historical Commission, that the work related to Building Permit #23-317, issued May 16, 2023, is not in compliance with the Westport Historical Commission Rules and Regulations.

You have been notified by the Commission pursuant to a Notice of Violation and Order to Respond issued on November 16, 2023, that construction of the structure covered by Building Permit #23-317 without a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship issued by the Commission violates G.L. c 40C, § 6; Westport By-Law Article LIX §§ 5905, 5907, & 5911 A.7; and Section VII.A.1 of the Commission's Rules and Regulations.

On Thursday, November 9, 2023, I issued a verbal Stop Work Order, but it appears construction remains ongoing. This is the official written Stop Work Order until the proper certificate is issued from the Commission.

Sincerely,

Ralph G. Souza
Building Commissioner/Zoning Officer

cc: Board of Selectmen
Historical Commission
Worcester Building Systems, 60 Stiles Road, Boylston, MA 01505

RS/rp

CERTIFIED MAIL 7022 0410 0001 3864 1704 – 72 Shrewsbury Street, Suite 7, Worcester, MA 01604
CERTIFIED MAIL 7022 0410 0001 3864 1681 – 60 Stiles Road, Boylston, MA 01505

EXHIBIT F

WESTPORT HISTORICAL COMMISSION



WESTPORT, MASSACHUSETTS

TO Building Department

DATE 12/26/23

Pursuant to the Historic District Act (Massachusetts General Laws, Chapter 40C) and the Westport Historical Commission By Law this

CERTIFICATE OF NON-APPLICABILITY

is hereby granted for the following work to a building or structure in the Westport Historic District:

ADDRESS OF PROPERTY 2015 Main Road PLATE _____ LOTS _____

NAME OF OWNER OF RECORD Robert Branca Trust PHONE _____

ADDRESS OF OWNER OF RECORD ANC Nominee Realty Trust of Robert Branca
72 Shrewsbury St. Suite 7 Worcester MA
01682

DESCRIPTION OF BUILDING OR STRUCTURE (all exterior architectural features) AFFECTED BY WORK

Denied

BRIEF DESCRIPTION OF APPROVED WORK (including all attachments and incorporations)

Raised platform part of a pool complex

WESTPORT HISTORICAL COMMISSION

BY [Signature] CHAIRMAN

ATTEST Cheryl Botter SECRETARY clerk

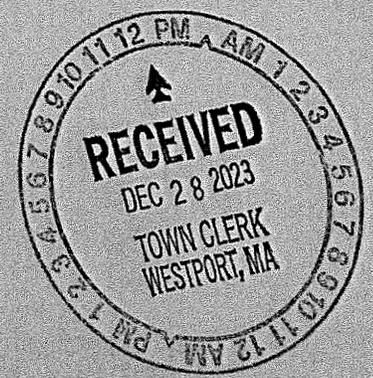


EXHIBIT G

**Westport Historical Commission
Notice of Determination on Application for Certificate of Appropriateness**

Re: 2015 Main Road
February 14, 2024

.....

On February 5, 2024, the Westport Historical Commission (the Commission) voted 5-0 (two members absent) to deny the December 19, 2023 Application for a Certificate of Appropriateness at 2015 Main Road. The following constitutes the written record of the Commission’s determination and reasons therefore pursuant to G.L. c. 40C, § 10(f), a copy of which shall be filed with the Town Clerk and the Building Department and sent to the Applicant.

Background:

The Application for the Certificate of Appropriateness was filed on December 19, 2023, after the Commission’s Chair issued a Notice of Violation and Order to Respond on November 16, 2023, because of construction in the District without a certificate from the Commission in violation of G.L. c. 40C, § 6, and the Applicant appeared at the Commission’s December 4, 2023, meeting and agreed to submit an Application for a Certificate of Appropriateness while reserving the right to contest the Commission’s jurisdiction.

The Applicant was notified on December 23, 2023, that the Application was incomplete because it lacked complete elevations with legible dimensions, failed to demonstrate changes in grade, and did not include information concerning the materials, colors, and dimensions of the railings, doors, pergola, and raised spa, among other things. On or about January 2, 2024, the Applicant submitted approximately 60 pages of additional materials to support the Application.

On January 8, 2024, the Commission commenced a public hearing on the Application, which was continued to February 5, 2024, at the Applicant’s request.

On January 26, 2024, the Applicant submitted certain supplemental materials in support of the Application. Such materials were reviewed at the February 5, 2024, meeting.

Jurisdiction of the Commission:

The Commission has review power over the construction of all structures within the Westport Point Historic District (the “District”). In the Commission’s view, the Application proposes the construction of a “structure” under G.L. c. 40C, § 5 (“a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway”), not merely “walls and fences” that are outside the Commission’s review pursuant to § 5911 of the Westport By-laws.

- The structure consists of an enclosure which covers approximately 4,500 square feet of area. There is a perimeter wall on three sides that is 197 feet in total length. All sides of the structure can be viewed from at least one public way—the Westport River. The proposed structure has the following dimensions per the submitted plan:
 1. South side is 91' long
 2. West side is 56' long
 3. North side is 50' long
- Heights of the perimeter wall of the structure vary from 6' to 9' above grade depending on where the structure meets the naturally sloping land, without taking into account the proposed railing at the top of the structure (which the Commission understands will add another approximate 3' to 4' to the height of the structure). The structure consists of poured concrete and rebar. The exterior of the structure is proposed to be clad in stone veneer. The Applicant's materials reflect that the railing will either be a modern, all glass design or a steel-and-tension-wire design.
- The overall mass of the structure is incongruous compared to the surrounding existing structures. The structure creates the appearance of a walled "bunker" to house the Applicant's alleged "in-ground" pool, as well as a mechanical room for pool equipment. The pool is not substantially at grade, but is instead raised above grade by its placement within the structure. In addition, the Applicant proposes to include a pergola, raised spa and outdoor kitchen as part of the pool complex.

Negative effect on the historical landscape:

- The plan, as submitted, negatively affects the historical landscape and architectural features of the District and is incongruous with the surroundings.
- The property is historically important because it is a surviving remnant of the original pastures that were divided by stone walls that lead down to the Westport River. The naturally sloping land from Main Road to the Westport River is a unique characteristic of the Westport Point. The Applicant seeks to manufacture a material change in the natural sloping landscape that is highly visible from a public way. The proposed structure is an incongruous detriment to the historical landscape.
- Many abutters attended the meetings and voiced their concerns about allowing such a structure to be built in the District. Some noted that if this structure was allowed, it could set a precedent to create many more similar structures or large platforms built throughout the District with basketball courts and the like.
- According to the Commission's Guidelines for the District § 4, B (Considerations in Determining Appropriateness — Size, Scale and Mass), "alterations and additions should be in harmony with the original building in size and scale." The size, scale, and overall mass of the structure proposed by the Application is not in harmony with the residential building on the property. Rather, the "bunker" dwarfs the remaining structures on the property, particularly when viewed from the Westport River.

- Additionally, the materials proposed (or already in use, without a certificate from the Commission) for the deck, pergola, and railings are not “in keeping with the architectural style of the existing building,” as required by § 4, L of the Commission’s Guidelines for the District.

Incomplete application:

- The Applicant was invited by the Commission at the January 8 meeting to make substantive changes to the plans and bring the structure more in line with other structures in the District, including but not limited to reducing the mass of the concrete platform. This was part of the reason why the Commission voted to continue the public hearing from the January 8 meeting to the February 5 meeting.
- The plans presented at the February 5 session, however, reflected no changes to the mass of the structure. Additionally, at the February 5 meeting, the Applicant appeared unwilling to consider changes to the mass, in part because his contractors had already poured the concrete for the structure despite not having obtained a certificate from the Commission.
- Rather than cut the existing concrete perimeter of the structure, as was suggested by an abutter at the January meeting, the Applicant’s plan proposes mounding large amounts of material around the structure in an attempt to hide the lower three feet of the above-grade portion of the structure; and proposes using shrubbery to mask the structure. These tactics do not in fact create a structure that is substantially at grade and merely distorts the existing naturally sloping land.
- The Applicant did not submit a lighting plan for the pool complex and outdoor kitchen areas. The Applicant noted that he did not have a plan for lighting which the Commission questioned given the use of the proposed structure and outdoor kitchen/patio. The District limits the use of up-lighting on structures (see § 4, P of the Commission’s Guidelines for the District).
- The Applicant provided a sample glass perimeter fence surrounding the proposed pool. Given the highly visible view corridor from the Westport River, the Commission noted that glass may be transparent, but it is not invisible and will likely create an unnatural glint and shiny reflection that can be seen from the water. Other options for the perimeter fence around the pool, more in keeping with the architectural character of the District, were not discussed.

Consideration for a Certificate of Hardship. Under § VII.D.4 of the Commission’s Rules and Regulations, the Commission is to consider whether the Application meets the criteria for a certificate of hardship upon denial of an application for certificate of appropriateness. As of the February 5 meeting, the Applicant had not submitted any materials concerning the hardship

factors set forth in G.L. c. 40C, § 10(c) and § VII.E.1 of the Commission's Rules and Regulations, such that the Commission was unable to consider whether a certificate of hardship was appropriate. The Commission invited the Applicant to submit such materials at the conclusion of the public hearing on February 5, 2024, but as of the date of this written record of the Commission's determination, the Applicant has not done so.

Denial of Certificate of Appropriateness:

After due consideration of the Applicant's plans as submitted and discussion over three meetings, the Commission unanimously (5-0) denied the Application for a Certificate of Appropriateness on February 5, 2024.

EXHIBIT H

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT
CASE NO.

TOWN OF WESTPORT, by and through its
BUILDING COMMISSIONER,

Plaintiff,

v.

ROBERT BRANCA AND JAMES SABRA,
TRUSTEES OF THE ANC NOMINEE
REALTY TRUST,

Defendants.

VERIFIED COMPLAINT
FOR ENFORCEMENT

INTRODUCTION

This is an enforcement action brought pursuant to G.L. c. 40C, § 13 by the Town of Westport (the “Town”), acting by and through its Building Commissioner as enforcement officer for the Westport Historic Commission (the “Commission”), for a violation of G.L. c. 40C, § 6 arising out of construction of a new structure at a property located at 2015 Main Road, Westport, Massachusetts (the “Property”). The Property, which is located in the Westport Point Historic District (the “District”), is owned by The ANC Nominee Realty Trust (the “Trust”), for which Robert Branca (“Branca”) and/or James Sabra (“Sabra”) serve as trustee(s). As set forth herein, the construction was commenced without obtaining a certificate from the Commission as required by G.L. c. 40C, § 6.

PARTIES

1. The Town is a municipal corporation with a principal place of business at Town Hall, 816 Main Road, Westport, Bristol County, Massachusetts. The Town acts by and through

its Building Commissioner, who is the Commission's enforcement officer for work that requires a building permit pursuant to § VII.G.2 of the Commission's Rules and Regulations ("Rules and Regulations").¹

2. Upon information and belief, Defendant Branca is an individual who resides at 2015 Main Road, Westport, Bristol County, Massachusetts 02790 and who currently serves as trustee for the Trust.

3. Upon information and belief, Sabra is an individual with an address of 72 Shrewsbury St., Suite 7, Worcester, Worcester County, Massachusetts 01602 and is the trustee of record for the Trust in the Town's Assessor records.²

JURISDICTION

4. Jurisdiction and venue in this Court are proper pursuant to G.L. c. 40C, § 13.

FACTS

5. The Trust owns the Property.

6. The Property is located in the District in Westport, Massachusetts.

7. As such, the Property is subject to Chapter 40C of the General Laws, Article LIX of the Town's By-laws, and the Commission's Rules and Regulations.

8. Under G.L. c. 40C, § 6 and § VII.A.1 of the Commission's Rules and Regulations, the owner of property in the District must obtain a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship from the Commission before constructing, altering, or demolishing any buildings and/or structures on the property regardless of whether such work requires a building permit.

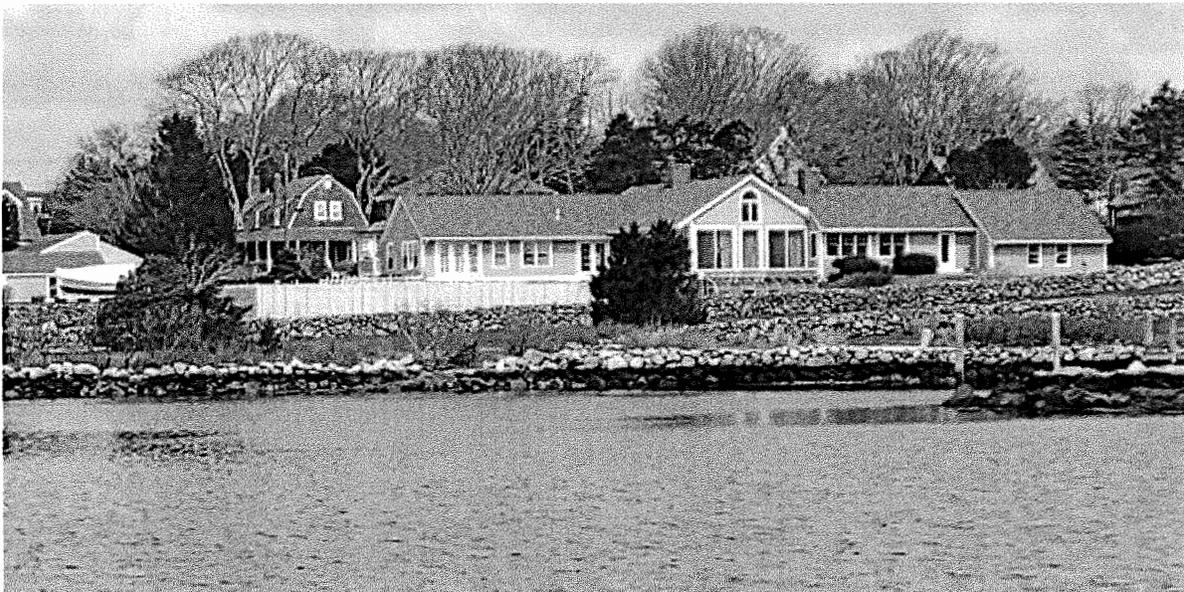
¹ The Rules and Regulations refer to the Town's Building Inspector. The title of this position has since changed and is now referred to as the Building Commissioner.

² Branca has stated that he filed a newly recorded trustee document with the Registry of Deeds, but the Town's Board of Accessors has no record of this filing. As such, both Sabra and Branca are named Defendants in this action in their roles as trustee of the Trust, which owns the Property.

9. Between May and November 2023, Branca, or those working for him and/or the Trust, began constructing an engineered concrete-and-rebar structure on the Property which was designed to house an in-ground pool, a raised spa, a mechanical room, a pergola, and a cooking area (the “Structure”).

10. According to plans submitted to the Town’s Building Department, the Structure would measure approximately 56 feet wide by 91 feet long, and would rise above grade by approximately 9 feet on the west side of the Property before factoring in the height of certain features on the top of the Structure, such as railings or the pergola. The Structure, as proposed, would be clad in stone veneer and have a railing that would be either a modern, all glass design or a steel-and-tension-wire design.

11. The west side of the Property—including the Structure—is visible by a public way, namely the Westport River including Hulda Cove, as reflected in the following photograph taken by the Town’s Harbormaster from the Westport River:



12. Neither Branca nor anyone else acting on behalf of the Trust sought, much less obtained, a certificate from the Commission before commencing construction of the Structure.

13. On November 16, 2023, the Chair of the Commission issued a Notice of Violation and Order to Respond (the “Notice of Violation”) to the Trust, a true and correct copy of which is attached hereto as Exhibit A.

14. The Commission held a meeting on December 4, 2023 during which the Notice of Violation was discussed.

15. Branca, along with counsel, were present at the December 4, 2023 meeting.

16. The Commission voted at the December 4, 2023 meeting to ratify the issuance of the Notice of Violation.

17. At the December 4, 2023 meeting, Branca proposed to respond to the Notice of Violation by submitting applications for a Certificate of Non-Applicability and for a Certificate of Appropriateness, while stating that he was reserving the right to contest the Commission’s jurisdiction over the Structure.

18. On December 19, 2023, Branca submitted to the Commission an Application for a Certificate of Non-Applicability (“CNA Application”), an Application for a Certificate of Appropriateness (“COA Application”), and a set of plans. True and accurate copies of these submissions are attached hereto as Exhibits B, C, and D, respectively.

19. On December 28, 2023, the Commission denied Branca’s CNA Application.³

20. On January 8, 2024, the Commission commenced a public hearing on the COA Application.

21. During the January 8, 2024 public hearing, the Commission invited Branca to make substantive changes to the plans to bring the Structure more in line with the historical

³ Branca, as trustee of the Trust, filed an appeal of this denial on January 16, 2024. See Branca v. Town of Westport Historical Commission, Superior Court Case No. 2473CV00032.

landscape and architectural features of the District, including but not limited to reducing the mass of the Structure.

22. At Branca's request, the public hearing was continued to February 5, 2024.

23. At the February 5, 2024 public hearing, the Commission determined that additional materials Branca had submitted reflected no changes to the mass of the Structure and discussed other concerns with the plans as then submitted.

24. At the conclusion of the February 5, 2024 public hearing, the Commission voted unanimously to deny the COA Application. A true and accurate copy of the Commission's decision is attached hereto as Exhibit E.⁴

25. The Commission also voted unanimously to proceed with enforcement of the Notice of Violation pursuant to G.L. c. 40C, § 13.

26. Branca and/or the Trust have continued construction of aspects of the Structure after the issuance of the Notice of Violation.

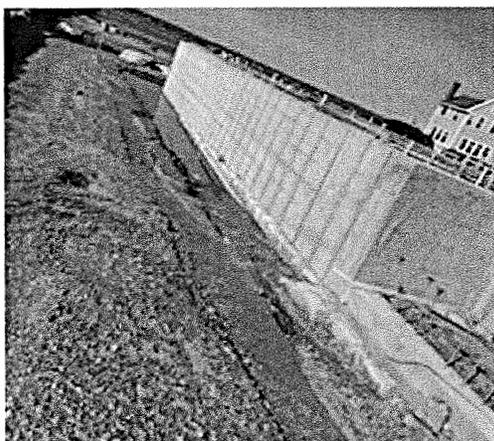
COUNT I
(Violation of G.L. c. 40C, § 6)

27. The foregoing paragraphs are hereby repeated and incorporated by reference as if fully set forth herein.

28. G.L. c. 40C, § 6 provides no building or structure within a historic district shall be constructed or altered in any way that affects exterior architectural features unless the Commission first issued a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship.

⁴ The decision was not filed with the Town Clerk until March 6, 2024 as a result of an agreement between the Town and Branca with respect to a motion for reconsideration that Branca filed on February 23, 2024. The Commission denied that motion at its March 4, 2024 meeting.

29. The Structure is a structure as defined in G.L. c. 40C, § 5, because its concrete-and-rebar reinforced platform, along with certain doors, mechanical features, and other design elements constitute “a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway,” as reflected in the following pictures taken by the Building Commissioner during inspections:



30. Pursuant to G.L. c. 40C, § 13, this Court may “restrain by injunction violations” of Chapter 40C and local by-laws enacted thereunder and “may order the removal of any building, structure or exterior architectural feature constructed in violation thereof.”

31. This Court may also enter a “fine of not less than ten dollars nor more than five hundred dollars” for “[e]ach day during any portion of which a violation continues to exist.”

32. The Property is in the District and, therefore, is subject to Chapter 40C and the Town’s Historical Commission by-law.

33. The Trust, through Branca, has violated G.L. c. 40C, § 6 (along with §§ 5905, 5907 & 5911.A.7 of the Town’s By-laws and § VII.A.I of the Commission’s Rules and Regulations) by constructing of the Structure without receiving a certificate from the Commission.

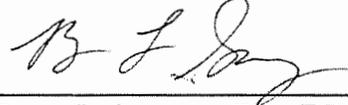
PRAYER FOR RELIEF

WHEREFORE, the Town respectfully requests that the Court:

1. Enter an injunction ordering Defendants Robert Branca and James Sabra, as Trustees of the ANC Nominee Realty Trust, to (a) cease construction of the Structure on the Property; and (2) remove all portions of the Structure that have been constructed on the Property without receiving a certificate from the Commission;
2. Enter an order allowing the Building Commissioner, other members of the Town's Building Department, and the Town's Police and/or Fire Departments (as necessary) to enter the Property to conduct inspections for compliance with the Court's injunction;
3. Enter an order requiring Defendants Robert Branca and James Sabra, as Trustees of the ANC Nominee Realty Trust, to pay a fine in the amount of \$300 per day for each day during which the Structure has existed, or continues to exist, on the Property;
4. Award the Town reasonable costs and attorneys' fees; and
5. Award such other relief as the Court deems just and equitable.

TOWN OF WESTPORT, by and through
its BUILDING COMMISSIONER,

By its attorneys,



Roger L. Smerage, Esq. (BBO # 675338)

David C. Jenkins, Esq. (BBO # 251000)

Steven C. Johnson, Esq. (BBO # 713251)

KP Law, P.C.

Town Counsel

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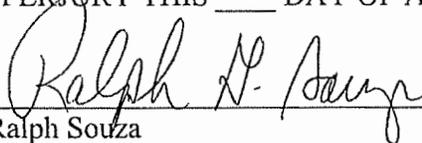
Dated: April 2, 2024

912240/WPOR/0116

VERIFICATION

I, Ralph Souza, Building Commissioner for the Town of Westport, hereby certify that I have read the foregoing Verified Complaint and that the facts contained therein are based upon my personal knowledge or my review of the records of the Building Department and Westport Historical Commission and are true to the best of my knowledge and belief.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 2 DAY OF APRIL, 2024.



Ralph Souza
Building Commissioner

EXHIBIT I

